

1 IN THE UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF MICHIGAN

3 UNITED STATES OF AMERICA ) Bay City, Michigan  
4 vs. ) February 28, 2019  
5 JAMES D. PIERON, JR., ) 8:29 a.m.  
6 Defendant. )  
7 )  
8 ) Case No. 18-20489  
9 )  
10 )

11 TRANSCRIPT OF TRIAL - VOLUME 2  
12 BEFORE THE HONORABLE THOMAS L. LUDINGTON  
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

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34 Proceedings reported by stenotype reporter.  
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## PROCEEDINGS

(At 8:29 a.m., proceedings commenced.)

(Defendant present.)

4 THE CLERK: United States of America versus James  
5 Pieron, Jr., Case No. 18-20489.

6 THE COURT: Good morning, counsel. If we could have  
7 your introductions, please.

8 MS. PARKER: Good morning, Your Honor. Janet Parker  
9 for the United States. Also with me is Jules DePorre,  
10 Assistant US Attorney, and Scott Hollabaugh, IRS criminal  
11 investigation special agent.

12 THE COURT: Good morning.

13 MS. PARKER: Do you want me to do Ms. Barkiewicz  
14 also.

15 THE COURT: Certainly.

16 MS. PARKER: Debbie Barkiewicz who is our technical  
17 support person.

18 THE COURT: She truly keeps the train moving.

19 MS. PARKER: At least the images.

20 THE COURT: And good morning.

21 MR. MINNS: Good morning, Your Honor. I'm going to  
22 do this right this time. Michael Minns for James Pieron,  
23 defendant, Ashley Arnett, Ken Sasse, and Ron Braver is our  
24 summary witness, and he's a former Internal Revenue Service  
25 special agent. We've given the CV and everything to the

1 Government.

2 THE COURT: Good morning to you.

3 MR. SASSE: Just as a minor point, can we use our  
4 computers in the courtroom?

5 THE COURT: Yes.

6 MR. SASSE: Thank you.

7 THE COURT: Government ready to proceed?

8 MS. PARKER: Your Honor, the Government would like to  
9 move for sequestration pursuant to Rule 615.

10 THE COURT: Do we have any known fact witnesses that  
11 are present in the courtroom?

12 MS. PARKER: Yes. I believe so, and I believe there  
13 are attorneys for multi witnesses, multiple attorneys for  
14 multiple witnesses, and I would ask that it extend to them so  
15 that the purpose of the sequestration is not frustrated.

16 THE COURT: Any opposition?

17 MR. MINNS: Sequestration to the opening arguments,  
18 Your Honor? Is that -- if that's the norm, I don't have --  
19 we -- I'm not used to that. I thought the sequestration was  
20 just so they can't hear witnesses, but I have no position in it  
21 really.

22 THE COURT: Then we're in agreement that we'll  
23 sequester witnesses, including opening statements.

24 Any other issues that counsel would like raised  
25 before we entertain the jury?

1                   MR. SASSE: Just for clarification on that, I assume  
2 the Government has their case agent they intend to keep in the  
3 courtroom, and we would also ask that Mr. Braver be allowed to  
4 stay in the courtroom.

5                   MS. PARKER: We weren't objecting to Mr. Braver.

6                   MR. SASSE: Thank you.

7                   MS. PARKER: We do have a summary witness, who we  
8 also would like to have in the courtroom for the reason that  
9 she's a summary witness potentially.

10                  MR. MINNS: I do object to the Government having two  
11 witnesses. They've asked for sequestration; we haven't. They  
12 have two witnesses. They should pick one of them to be in, but  
13 they're not entitled to two I don't believe.

14                  THE COURT: One I understand is a case manager and  
15 case witness, the other is a summary witness.

16                  MR. MINNS: But they're also named witnesses, both of  
17 them.

18                  MS. PARKER: So are the two people sitting at counsel  
19 table who are not attorneys. We're not objecting to that.

20                  MR. MINNS: One's the party.

21                  THE COURT: I would respectfully agree. Those two  
22 parties may remain.

23                  MR. MINNS: I understand, Your Honor.

24                  THE COURT: Any other issues that we need to resolve  
25 before we entertain the jury?

1                   My understanding is that we have preliminary  
2 instructions to provide to the jury. I have organized those,  
3 including the instruction on direct and circumstantial  
4 evidence.

5                   MS. PARKER: Thank you, Your Honor.

6                   THE COURT: And then would anticipate, after the jury  
7 is sworn, proceeding directly to opening statements.  
8 Government, ready to proceed?

9                   MS. PARKER: The Government is ready, Your Honor.

10                  THE COURT: Defense?

11                  MR. MINNS: Yes, Your Honor.

12                  MS. PARKER: Judge, do you want to address the motion  
13 in limine.

14                  THE COURT: No.

15                  MS. PARKER: Okay.

16                  THE COURT: It was filed, I read it early this week,  
17 and the defense timely filed a response at 6:45 this morning.  
18 I'm about three pages into it, and the advantage of opening  
19 statements will give me the opportunity to gain some additional  
20 context concerning the filing.

21                  I'm comfortable with a certain amount of factual  
22 background related to the defendant being introduced  
23 contextually to explain his capabilities, his circumstances in  
24 working in Europe as well as some background on the technical  
25 work that he was doing at that point.

1                   We'll take up, I believe, a little bit more of the  
2 discussion concerning particular dates of tax payments and  
3 their relevance later on, but we'll -- the opening statements  
4 will provide us with some context in which to understand some  
5 of the motions -- the motion in limine and the response.

6                   Anything else that you'd like to cover before we  
7 entertain the jury?

8                   MS. PARKER: Well, as to what the Court just  
9 indicated, that -- the timing of payments would impact one of  
10 the charts that defense counsel showed us they intended, excuse  
11 me, to use during opening, and I would ask that it not be used.

12                  THE COURT: He -- he may use that at the risk that it  
13 may be ruled inadmissible at some point. I mean, that's --  
14 that's the risk that anyone takes when you use materials in  
15 opening statement, presuming that they may be admissible. We  
16 have not had the question framed at this point; and,  
17 respectfully, I suspect that there was a reasonable amount of  
18 debate, even within the Government, as to whether or not you  
19 wanted to eliminate the dates of those payments. They are  
20 valuable to the defendant in terms of one argument. They're  
21 also valuable to the Government as well, and both sides take  
22 some risks with respect to the introduction of that  
23 information.

24                  We're ready on the preliminary instructions. The  
25 jury is assembled. I had asked Mr. Haines to provide you a

1 quick email on one of the responses that we had received from a  
2 juror. He was less than excited, upon reflection, about the  
3 responsibility, but notwithstanding that fact was in the  
4 building when I got here at 7:50 this morning, and is ready to  
5 go so far as we understand.

6 So we will entertain the jury, give them the  
7 instructions, and I'm looking forward to your opening  
8 statements. All rise for the jury.

9 (At 8:36 a.m., jury arrives.)

10 THE COURT: Please be seated. My name is Tom  
11 Ludington. I'm the trial judge assigned to the case. We'll be  
12 spending a little bit of time together over the next couple of  
13 weeks. I appreciate the fact that you were all here promptly  
14 this morning. Our practice is to be organized as quickly as  
15 possible in order to eliminate any additional time that we  
16 would ask of you. I also want to thank Judge Morris for her  
17 effort in selecting such a fine group of people as our jury for  
18 the case. It's a pleasure to have you here.

19 Our order of events this morning will be to provide  
20 you some preliminary instructions that apply to all criminal  
21 cases and give you a little bit of background about the  
22 expectation that you can have of us and of counsel during the  
23 course of the trial. We will then have you sworn as the jury  
24 in the case and go directly to opening statements from the  
25 Government and from the defense if they elect to furnish an

1 opening statement at this time. They may wait until later on  
2 during the course of the case.

3                   So to get started, I want to speak to you briefly  
4 about the function of the judge in a criminal trial and your  
5 function as the jurors. You will be sworn as the jury to try  
6 this case. By your verdict you will decide the disputed issues  
7 of fact that exist between the parties. The Court will decide  
8 the questions of law that arise during the trial and before you  
9 retire to deliberate at the close of the trial, we will provide  
10 you instructions on the law that you are to follow and apply in  
11 reaching your verdict.

12                  It is my responsibility to conduct the trial in an  
13 orderly, fair and efficient matter, to rule upon questions of  
14 law that arise during the course of the trial and to instruct  
15 you about the law that applies to the case.

16                  You can look upon my function, that is the function  
17 of the Court, is that of a referee or umpire. I have no  
18 personal or professional interest in how this case is decided.  
19 My job is to see to it that only legally admissible evidence is  
20 received in court and to tell you what the law is during and at  
21 the end of the trial, as well as to settle any disputes that  
22 may exist between the attorneys that arise during the course of  
23 the trial.

24                  The seats that you are in are the seats that you will  
25 take whenever you are in the courtroom. It's important that

1 you try to keep a good understanding of what your order is.  
2 It's easiest -- it's easiest to organize yourself in the jury  
3 room and on your way in so that you avoid the problems that are  
4 kind of associated with moving around. You've had practice on  
5 that now, and I have every confidence that you're going to nail  
6 it the next time you're in the courtroom.

7                   You will be provided, indeed you have, badges. We  
8 would ask that you keep those on whenever you are in the  
9 vicinity of the court, and by that I mean even outside of the  
10 court as you enter. It's important for us, both court  
11 employees, as well as the parties that are involved with the  
12 case, that we know who you are and that we also understand what  
13 your role here is as impartial decision makers.

14                   You will find, for example, that if you are  
15 approaching a door at the entry, and any of the parties that  
16 are involved in the case are there, they will maintain their  
17 distance. That's not because they're old and mean people.  
18 That's because they're following through on their obligation to  
19 respect your impartiality in deciding the questions that are  
20 here. They want to avoid any kind of personal contact so as  
21 there's no suggestion of any kind of partiality. The badges  
22 help all of us know that.

23                   My understanding is that Judge Morris would have gone  
24 over the time periods that we have calendared. I will actually  
25 try to make arrangements for you to have a printed copy of

1 those, if you do not, so that you can have that available to  
2 you.

3 We will on occasions, depending on witness  
4 availability, maybe go a little bit longer at various periods  
5 of time. The more we can accomplish in a single day, the fewer  
6 days we ask of you, but before we go beyond any one of those  
7 time periods, we will ask you in advance if you have any  
8 conflicts before we do so.

9 You will notice that we have 14 jurors. Two jurors  
10 are alternates. I do not know who they are, they will be  
11 selected at the conclusion of the trial before deliberation.  
12 We do this because we know in the ordinary experience of life  
13 that people can be sick and have accidents or emergencies, so  
14 we have two extra jurors to be sure that the required number  
15 will be available when you retire to deliberate. When you  
16 retire to deliberate, the case will be decided by a jury of 12  
17 people.

18 You will be permitted to take notes during the course  
19 of the trial. You're not obligated to take notes. If you do  
20 take notes, you should not careful not to be influenced by the  
21 notes of another juror. You should reply primarily on your own  
22 memory and recollection of the evidence and the testimony in  
23 the case. Note taking must not be allowed to distract you from  
24 what happens here in court.

25 Let me briefly explain the general order of procedure

1 in the trial. First, the Government will be, by counsel,  
2 making an opening statement in which they outline their theory  
3 of the case. The attorney for the defendant may then make an  
4 opening statement, or he may reserve it until later on during  
5 the case. The opening statements are not evidence. They are  
6 only intended to assist you in understanding the viewpoints and  
7 the claims of the parties.

8 After opening statements, we will begin the process  
9 of taking evidence. The Government will present their evidence  
10 first. They will call witnesses and will offer exhibits, such  
11 as documents or also possibly physical objects into evidence.  
12 The attorney for the defendant will have a right to  
13 cross-examine any witness called by the Government in order to  
14 test the truth and accuracy of their testimony, as well as to  
15 elicit any testimony that might be favorable to the defendant.

16 Following the Government's presentation, the  
17 defendant will have an opportunity to present evidence. You  
18 should clearly understand that a defendant in a criminal case  
19 is not obligated to produce any evidence whatsoever. The law  
20 does not require a defendant in a criminal case to prove his  
21 innocence or to produce any evidence at all. Similarly,  
22 however, the attorney for the Government will have a right to  
23 cross-examine any witness that is called by the defendant.

24 After all the evidence is presented, we will give  
25 preliminary final instructions that will outline the law that

1 applies to the case and the questions that we will ask you to  
2 answer. After we've provided you the instructions, both of the  
3 attorneys will have an opportunity to present closing arguments  
4 in support of their case. You are again reminded that the  
5 statements of the attorneys in closing arguments, as in opening  
6 statements, are not evidence. They're intended to assist you  
7 and provide you a guideline of the evidence in the case as well  
8 as the theory of each party. You must base your decision only  
9 on the evidence.

10                 Following the closing arguments, I -- as I explained,  
11 I'll give you detailed instructions on the manner of your  
12 deliberations. You will then retire and deliberate on your  
13 verdict. You will do that by applying the law as I give it to  
14 you, to the facts as you find them to be. The function of the  
15 jury is to determine the facts. You are the sole and exclusive  
16 judges of the facts, and you alone determine the weight, the  
17 effect and the value of the evidence, as well as the  
18 credibility of the witnesses that will appear before you.

19                 You must consider and weigh the testimony of all  
20 witnesses who appear, and you alone are to determine whether to  
21 believe any witness and the extent to which any witness should  
22 be believed. It is your responsibility to consider any  
23 conflicts in testimony which may arise during the course of the  
24 trial. Your decision as to any fact in this case is final. On  
25 the other hand, it is your duty to accept the law as the Court

1 states and provides it to you.

2                   Your determination of the facts must be based only on  
3 the evidence which is offered and received in the courtroom.  
4 Evidence consists of the sworn testimony of the witnesses, and  
5 may also include the exhibits or other physical objects which  
6 are submitted into evidence.

7                   From this point forward, you must not discuss the  
8 case with anyone, not even members of your own family or fellow  
9 jurors. It would be unfair for you to discuss the case among  
10 yourselves or with family and friends before you retire to  
11 consider your verdict. So you may tell your family and friends  
12 that you have been selected as a juror, but then you must tell  
13 them that you are under instructions from the Court that you  
14 are not to discuss the case with them until the Court permits  
15 you to do so.

16                   After the case is submitted to you for deliberations,  
17 you must still discuss it only when the Court instructs you to  
18 do so, and only in the jury room, and only in the presence of  
19 all of your present -- fellow jurors. When the trial is over,  
20 you may discuss the case with anyone that you wish. Until that  
21 time, we ask that you control the natural desire to discuss the  
22 case both here and at home.

23                   The only information that you should receive about  
24 this case should come to you while you are altogether as the  
25 jury in the presence of the Court, the attorneys that are

1 involved in the case, the defendant and all other present  
2 witnesses.

3 You must not consider any information which might  
4 come to you from outside of the courtroom. You should not read  
5 any newspaper articles, if there are any, relating to the  
6 trial. You must not listen or watch television or listen to  
7 radio accounts, if there are any during the course of the  
8 trial's progress.

9 Please do not visit the scene that may be mentioned  
10 in the evidence. If for any reason doing so would be necessary  
11 or helpful to your understanding of the evidence in the case,  
12 we would do so under controlled circumstances. I do not  
13 believe there is a high likelihood of that with respect to this  
14 case.

15 You must also not make any investigations on your own  
16 about the case, the witnesses, the parties or the attorneys.  
17 Let me emphasize this. I know that many of you have computers,  
18 smart phones, iPads and equivalents and that you use them in  
19 daily life to research many issues. For example, you might use  
20 them to learn information about the case, about the attorneys,  
21 about witnesses or anything like that. That will be prohibited  
22 here for the reasons that we outlined earlier, which is that  
23 it's important that any information that you learn about the  
24 case or associated parties should come to you only in the  
25 courtroom and only in a way that's consistent with the Rules of

1 Evidence which govern the information that you may use in  
2 reaching conclusions in the case. So, please, do not do any  
3 research about the case or use any of that technology to  
4 communicate with anyone outside of the jury.

5 A trial follows long established rules of procedure  
6 and evidence. The attorneys are trained in these rules, and  
7 from time to time will make objections and likely motions. I  
8 will rule on these during the -- during the trial. Most of  
9 these -- most of the time I will make rulings in your presence.  
10 There are occasions where we may need to consider a wider range  
11 of information, and we may excuse you from the courtroom while  
12 we make those decisions. We will be careful and prompt in  
13 resolving any of those issues understanding that we are working  
14 on your time.

15 I'd like to talk briefly about some of the evidence  
16 that may be brought to your attention during the course of the  
17 trial. You may have heard the terms direct evidence and  
18 circumstantial evidence. Direct evidence is simply evidence,  
19 like the testimony of an eyewitness, which, if you believe it,  
20 directly proves a fact. If, for example, a witness testified  
21 that he saw it raining outside and you believed the witness,  
22 that would be direct evidence that it was raining.

23 Circumstantial evidence, by contrast, is simply a  
24 chain of circumstances that indirectly proves a fact. For  
25 example, if someone walked into the courtroom wearing a

1 raincoat covered with drops of water and carrying a wet  
2 umbrella, that would be circumstantial evidence from which you  
3 could conclude that it was raining. It is your job to decide  
4 how much weight to give the direct and circumstantial evidence.  
5 The law makes no distinction between the weight you give to  
6 either one and does not conclude that any type of evidence is  
7 better than the other. You should consider all the evidence,  
8 both direct and circumstantial, and give it whatever weight you  
9 believe it deserves.

10 Please let me know immediately by raising your hand  
11 if you cannot hear a witness or see what's being demonstrated.  
12 Also if at any point in time you need a break, and I haven't  
13 extended it, don't hesitate to put your hand up, let me know,  
14 and we should be able to accommodate you. If you have any  
15 particular requests in terms of accommodations or assistance  
16 that we can provide during the course of the trial, please do  
17 not hesitate to let Mr. Haines or me know.

18 That was the instructions I had organized for this  
19 morning. Counsel, any additions or corrections?

20 MS. PARKER: No addition or corrections from the  
21 Government, Your Honor. Thank you.

22 THE COURT: Sir?

23 MR. MINNS: No, Your Honor.

24 THE COURT: The Government ready to proceed to  
25 opening statement?

1 MS. PARKER: No, Your Honor. I believe the jury  
2 needs to be sworn.

3 THE COURT: I think that's an excellent instruction.

4 MS. PARKER: Every once in a while, I come up with a  
5 good one.

6 THE COURT: If you'd please swear the jury.

7 THE CLERK: Please stand and be sworn.

8 (At 8:56 a.m., jury sworn by the clerk.)

9 MS. PARKER: May it please the Court, ladies and  
10 gentlemen of the jury, first all, I'd like to welcome you back.  
11 I know you had a day off in between here to try and recover  
12 from the shock of being selected as a juror, and hopefully  
13 you're ready to get going today on this case.

14 I'd also like to introduce those that are at my table  
15 again for all of you. First of all, we have the case agent  
16 Scott Hollabaugh. His office is in Lansing. He's a criminal  
17 investigator. He's a cop for the IRS. There are other kind of  
18 people who work for the IRS that don't have law enforcement  
19 authority, but this is a criminal case and he's the case agent.

20 Also Jules DePorre; Jules is another US attorney as I  
21 am. We have an office just over on the river a couple blocks  
22 away, and Debbie Barkiewicz is our magician at the computer who  
23 makes our exhibits appear once they're admitted into evidence,  
24 and they'll be -- we should all be here working to get this  
25 case presented to you.

1                   Now, Judge Ludington has given you some instructions  
2 that outline the various stages of the case and some of the  
3 grounds rules of how you need to act and we need to act towards  
4 you and also some of the evidentiary ground rules, too. The  
5 judge's instructions are very important to you. Keep those in  
6 mind throughout the case. Pay attention to those both now and  
7 those that he will give at the end of the case as well.

8                   And I just want to reemphasize, the judge said that  
9 we will be keeping our distance as we come in the building,  
10 like when we get to the security station. Same thing if we  
11 happen to run into you at Meijer's or something like that.  
12 Don't come up and try to talk to us, and we won't try to talk  
13 to you. It's not that we have anything against you or anything  
14 like that, we just know that it would be inappropriate for us  
15 to do that.

16                   I believe the Court also instructed you that  
17 statements are -- and if he hasn't already, he will -- that  
18 statements of counsel are not evidence, and that's an important  
19 thing to keep in mind, because what you need to decide -- or  
20 use to decide in this case the guilt or innocence of the  
21 defendant is the evidence, and that's going to be the testimony  
22 that you hear from the witness stand, the exhibits that are  
23 received by the Court, and also your reason and common sense  
24 evaluating those things, putting the evidence and the law  
25 together that the judge gives you to arrive at a verdict in

1 this case.

2                   So the instructions that the judge has given you and  
3 he will give you, those are the law that you will need to  
4 follow in applying the evidence to the charge in this case and  
5 arriving at a verdict.

6                   Now, you should take the law from the judge, not from  
7 any other source. Sometimes TV gives a notion, you know,  
8 people see things that -- as you heard the judge just now  
9 instruct, that certain kinds of evidence are better than  
10 others. That's not what the judge will instruct you. Anything  
11 that he allows you to see or hear is proper evidence for you to  
12 consider.

13                  You have to decide what you believe and what you  
14 don't believe and how it -- that factors in is your conclusion  
15 to make, not anybody else's, but don't second-guess the judge's  
16 rulings. I've on occasion talked to jurors after a verdict and  
17 they said, well, we thought that was hearsay. Well, the rules  
18 of hearsay are a little complex, and the judge knows them, and  
19 we try to follow them as attorneys, but you shouldn't try to  
20 say, well, I don't like that because I think that's hearsay.  
21 If he's allowed you to see or hear the evidence, it's  
22 appropriate evidence for you to use whatever way you see fit in  
23 the case.

24                  And the judge also talked about direct and  
25 circumstantial evidence, and talked about a person with a

1 raincoat and testimony regarding rain. I'd like to give you  
2 another example, since we're all familiar with it, snow. We  
3 all know if you go to bed and there's no snow, and you get up  
4 in the morning and there's snow on the ground, that it snowed  
5 overnight. You didn't see it happen, but you know it happened  
6 because you see the evidence of it. That's a reason and common  
7 sense. That's drawing conclusions from things that are known  
8 to the rational conclusion that that leads to.

9                   But that can go even further. Say you went to bed  
10 there was no snow, you got up in the morning, there's snow, and  
11 there's also some footprints in the snow. And most of us know  
12 that a footprint that's of a boot was probably made by a  
13 person, but little prints maybe going over your car might have  
14 been made by a cat, might have been made by the neighbor's cat,  
15 whatever, but there are different things that you can draw from  
16 it.

17                   You can tell from the prints which direction the  
18 person or the cat or whatever traveled, even though you never  
19 saw that person, you never saw that cat. And those are the  
20 kind of reasonable things you will be asked to do in this case.  
21 Why is that? Because you will have to decide if the  
22 defendant's actions were willful. You're not going to have a  
23 witness who's going to get on the stands and say, I, James D.  
24 Pieron, Jr., willfully will spend years avoiding paying my 2008  
25 and 2009 taxes.

1                   MR. MINNS: Excuse me, Your Honor, I have to object  
2 on the comment. It violates the restriction against commenting  
3 on the Fifth Amendment.

4                   MS. PARKER: I said there's not going to be a witness  
5 that says that.

6                   THE COURT: Overruled.

7                   MS. PARKER: Likewise, there's not going to be a  
8 document that says, here's my plan. This is how I'm going to  
9 evade taxes for years, for 2008 and 2009.

10                  Willfulness is the state of the defendant's mind, and  
11 you will have to figure that out, decide what his mental state  
12 was when he did the things he did over a period of years and  
13 decide if that was willfully evading or trying to avoid the  
14 payment of his taxes.

15                  And, ladies and gentlemen, that's this case in a  
16 nutshell. The one thing you have to decide in this case --

17                  MR. MINNS: May I be permitted to --

18                  THE COURT: Yes, sir.

19                  MR. MINNS: Thank you.

20                  MS. PARKER: I did show it to counsel prior to  
21 proceeding, Your Honor.

22                  Evasion of payment of taxes for 2008 and 2009.  
23 That's this case. Plain and simple. What it's not. It's not  
24 a charge that he failed to file returns. There was some  
25 reference to that earlier during jury selection, but that's not

1 what we're going to prove. In fact, the evidence will be that  
2 defendant filed a fairly substantial stack of returns. Some of  
3 them were late, yes, you'll see the evidence that many of his  
4 tax returns were filed out of time, but that's not the issue.

5 Likewise, there's no charge that he filed false  
6 returns. Again, you will probably see evidence in this case  
7 that may lead you to think that some parts of his returns were  
8 false, but that is not the charge. The charge is evading the  
9 payment of the taxes that he owed for 2008 and 2009.

10 What you will see is that Mr. Pieron did file tax  
11 returns for 2008 and 2009. He filed them quite late, but you  
12 don't have to decide anything relating to the lateness of the  
13 returns at all. That's not the issue.

14 You don't have to decide anything about the  
15 truthfulness of the return. Again, that's not the issue. You  
16 don't even have to decide how much he owed. Why? Because  
17 we're going to take him at his word. We're going to accept  
18 what he said to the IRS he owed when he filed his tax returns.  
19 Because when he filed them, he didn't submit any payment.

20 He owed. He owed lots of money, and at one point he  
21 owed \$444,880. That's what he said on a form that he sent to  
22 the IRS. That's what he owed. So the only real issue here,  
23 again, is what did Mr. Pieron do to avoid paying those taxes?  
24 That's the only real question. Did James Pieron, Jr. try to  
25 avoid paying taxes that he had the ability to pay?

1                   Now, the background events in this trial that give  
2 rise to that question, they happened before 2008 and 2009,  
3 because before 2009, Mr. Pieron had been living overseas in  
4 Europe, mostly in Switzerland. You will see he was running  
5 businesses and moving around millions of dollars. We're not  
6 talking chump change here. We're talking millions of dollars.  
7 He had a business with employees. He had Swiss bank accounts.  
8 He had other foreign bank accounts in other countries. He had  
9 business, personal bank accounts and lots of money going in and  
10 out of those accounts for several years.

11                  So you will see bank statements and wire transfer  
12 records that show lots of money being moved in and out of the  
13 accounts that Mr. Pieron controls. He's in charge. Sometime  
14 around 2009 he decided to move back to the US and actually to  
15 move back to Michigan. He knew, or at least learned, that he  
16 should have filed tax returns for the years that he was living  
17 and working overseas, so he asked some relatives to help him do  
18 those returns.

19                  And the relative does some years of returns for  
20 Mr. Pieron, but basically says he can't or won't do the returns  
21 for some years, including 2008 and 2009. They're more  
22 complicated or whatever than he is willing or able to do.

23                  So James Pieron then goes to a tax resolution company  
24 called American Tax Solutions, Incorporated. That's a place in  
25 Chicago. Even though he's in Michigan, he chooses this place

1 in Chicago, and gets tax returns done for him for 2007, 2008,  
2 2009, 2010. And, again, he files those returns with the IRS  
3 but he does not pay the taxes that are owed as reported on  
4 those returns. It turns out that Mr. Pieron does owe a lot of  
5 unpaid taxes, not to mention penalties and interest.

6 By the way, when you look at those taxes, you'll see  
7 that he did get credit on his US taxes for the taxes he paid in  
8 Switzerland to the Swiss government, but that's not enough of a  
9 tax reduction of the taxes that are owed by Mr. Pieron to  
10 satisfy him.

11 So he does things to keep trying to reduce the taxes  
12 he owes but has not paid. One of the things he does, ladies  
13 and gentlemen, is he goes to still more tax preparers. You  
14 will see that he had tax returns done by different people or  
15 tax preparation firms for the same years, again, multiple  
16 times. As I said, there will be a stack of returns that he had  
17 prepared and submitted to the IRS.

18 He gives those tax preparers, Mr. Pieron does, gives  
19 those tax preparers a little different information on different  
20 occasions to try to get a result that he thinks is better for  
21 him tax wise. He wants a much lower tax obligation.

22 However, and this is the key, he's still not paying.  
23 He's still not paying what he owes on those returns prepared  
24 for him, particularly for 2008 and 2009. What else is he  
25 doing? He's spending money on things he wants to have or to

1 invest in rather than paying his taxes, and you will see  
2 multiple examples of this. I will give you a few.

3 One example out of many; 2008, 2009 taxes, those are  
4 unpaid, but he goes out and he buys a brand new Mercedes Benz.  
5 He pays over \$100,000 for it in 2009, rather than pay his  
6 taxes. As you will see, he pays for that Mercedes Benz up  
7 front. There's no lien on it. He pays for it in full and  
8 drives it off the lot.

9 And another thing, ladies and gentlemen, another  
10 thing, he puts the car title not in his name, but in the name  
11 of one of his businesses, a business that I may not be  
12 pronouncing it correctly, but we pronounce it Komplique,  
13 K-O-M-P-L-I-Q-U-E. That's a company that he owns. He's  
14 100 percent owner of that company at the time. He puts the  
15 title to that 100,000 plus dollar Mercedes Benz into the  
16 company's name, so that's another important part of the case.

17 You will see that Mr. Pieron doesn't own a lot of  
18 stuff in his own name. No way. He knows if you owe taxes, and  
19 you haven't paid those taxes, and you have assets, the  
20 Government, the IRS, can come and seize what you own. So he  
21 doesn't own much, it's his companies that he owns that owns the  
22 property. He puts almost everything in the name of his  
23 businesses.

24 Look at his own bank account, couple hundred bucks,  
25 may get up to a couple thousand, but there's millions, millions

1 in accounts in the names of his businesses, and he controls  
2 those accounts.

3 So over the course of this trial, you'll also see  
4 that he was required to report his foreign bank accounts, both  
5 his personal bank accounts and his business bank accounts. The  
6 reporting form is called an FBAR report, F-B-A-R report. He  
7 didn't do those in the years when they were due, but when he  
8 came back to the United States he finally did do his FBAR  
9 reports. But you will see he did not do that with complete  
10 accurately. He took steps to make sure that his FBAR reports  
11 were not accurate. For example, the FBAR reports require a  
12 person to put on the form what was the highest dollar amount in  
13 each account for the year in issue.

14 Now, Mr. Pieron hired a firm to help him, paid a firm  
15 to help him prepare these forms, but he didn't give them all  
16 the information. He didn't give him -- he didn't give the  
17 firm, I should say, the statements for all times for those  
18 foreign bank accounts. The firm that was doing that was --  
19 it's called Anderson Hooper Pavlik, that's AHP, because that's  
20 a little easier to say, but he didn't give them all the  
21 statements for the month in particular that had the highest  
22 dollar amount in it, that had the highest dollar amount  
23 reflected on the statement, and that's the number that's  
24 supposed to be on the FBAR report.

25 The statement that they didn't get would have

1 reflected that he had over -- or he had a quarter of a million  
2 dollars in that account. And how do we know that? We don't  
3 know because we haven't seen the statement either, but we have  
4 the wire transfer of three-quarters of a million dollar coming  
5 out of that account and going into one of his business accounts  
6 here in the United States.

7 The records for the bank here show the incoming wire  
8 transfer for three-quarters of a million dollars. That's not  
9 on his FBAR report, and that's his responsibility, not the  
10 responsibility of the people helping prepare the report.  
11 That's his. He didn't give them that information. And you  
12 will get to see the evidence of that wire transaction. The  
13 money coming from his foreign bank account into his business  
14 account, not his personal account.

15 And you will see that Mr. Pieron did that kind of  
16 thing over and over and over, hiding his money in his business  
17 accounts. He also has the companies buy the things he wants;  
18 everything from meals up to pianos and other expensive things.  
19 The companies by those items. Instead of calling those  
20 purchases income to himself, which they were, he tries to claim  
21 that the money was repayment of a loan to the company.  
22 Meanwhile his taxes remain unpaid.

23 So in January of 2011, Mr. Pieron decides to make an  
24 offer to the IRS to pay off his tax debts for back taxes for  
25 2007, 2008 and 2009. He says he owes \$444,880, and we're going

1 to take him at his word on that for this trial. And he offers  
2 to pay the IRS \$1,500 a month to pay off those back taxes.

3 You'll get to see that form and get to see that, and  
4 it's important when you look at that form, you will see that he  
5 tells the IRS that he has a Volkswagen, which, in fact, he  
6 does, and it's paid off in full. And he says he has two  
7 companies, and they're each worth \$1,000, and a few dollars in  
8 his personal accounts.

9 He doesn't mention the 2009 Mercedes Benz that is  
10 titled in the name of one of those companies. That and other  
11 things Mr. James Pieron left off the form when he asked the IRS  
12 too accept his installment plan, but that's not all in this  
13 case. James Pieron essentially tells the IRS he can only  
14 afford to pay that \$1,500 a month towards his back taxes.

15 But a couple months after he files that form, in  
16 January of 2011, what does he do? He goes out and buys a brand  
17 new motorcycle. He pays \$18,900 and change for that  
18 motorcycle. Pays for it in full. And you have to decide, was  
19 that money that he could have been using to pay off the taxes?  
20 Should he pay his taxes or go out and buy himself a big  
21 customized motorcycle; again, free and clear of all liens. He  
22 decides not to pay the taxes. He decides to buy that bike  
23 rather than pay the taxes.

24 Well, he does, in fact, make a few of those \$1,500  
25 payments, but not many, and then he stops. And time continuing

1 to go by and the taxes continue to remain unpaid. And money  
2 continues to go in and out of his business accounts, and the  
3 business continues to pay for things that Mr. Pieron wants and  
4 uses, but the IRS doesn't get paid by Mr. Pieron.

5 So in 2014 Mr. Pieron decides now I'm going to make  
6 an offer and compromise to the IRS. He says he'll pay the IRS  
7 a princely sum of \$30,000 to pay off years of back taxes, not  
8 just 2008, 2009, but several years, including 2008 and 2009.  
9 Again, he fills out a form listing his assets, much like the  
10 other form I've already talked to you about.

11 And you will see, when you look at that form from  
12 2014, it doesn't list the 2009 Mercedes Benz, and there's a  
13 good reason for that. It's because he doesn't own it anymore.  
14 His company doesn't own it anymore. Other evidence will show  
15 you the reason he doesn't have that 2009 Mercedes Benz is he  
16 traded it in on a 2013 Mercedes Benz that cost him \$140,000,  
17 while he's not paying his taxes.

18 And, again, he buys that motorcycle -- or, excuse me,  
19 that 2013 Mercedes Benz free and clear of liens; and, again,  
20 it's not titled in his name. It's titled to a company. And  
21 that Mercedes Benz, the 2013 one, is also not on that 2014 form  
22 listing assets. Even though that's just the very next year,  
23 he's still got the car because that's a luxury item he's  
24 driving around, but it's titled to a company.

25 He didn't want the IRS to know about it. Didn't want

1 the IRS to seize that car. Didn't want the IRS to seize other  
2 things. These are all some parts of the way -- of the many  
3 ways that Mr. Pieron sought to avoid paying the taxes that he  
4 himself reported he owed. And as I said at the outset,  
5 avoiding paying the taxes, that's what Mr. James Pieron did.  
6 That is what the evidence in this case will be about, and  
7 that's what you need to focus on.

8                   Don't be confused by claims that the defendant didn't  
9 know he had to file tax returns while working overseas. That's  
10 not the issue. We've heard that in jury selection, but that's  
11 really not at all the point of this trial. Don't be confused  
12 by that. It simply doesn't matter. He's not charged with that  
13 in any way. He's not, as I said before, charged with lying on  
14 his returns; and, frankly, in this case, you don't have to try  
15 to figure out what his taxes should have been. Just like I  
16 said, we're going to take him at his word.

17                   So don't be distracted and confused by extraneous  
18 matters. Decide this case on the law that Judge Ludington  
19 gives you throughout the trial, what he's already given you and  
20 at the end of the trial and on the evidence that you hear from  
21 the witness stand, you see in the documents that are the  
22 exhibits, and the reasonable conclusions that you make based on  
23 evidence. If you pay attention to the evidence, and apply the  
24 law, in light of this one question, at the end of this trial,  
25 ladies and gentlemen, you'll have no difficulty finding James

1 Pieron guilty of evading his 2008 and 2009 taxes and remaining  
2 years.

3 I thank you for your attention to my opening  
4 statement, and I look forward to presenting this case along  
5 with my partners over here for the balance of the trial. Thank  
6 you.

7 THE COURT: Thank you, ma'am.

8 Mr. Minns, does the defense wish to offer an opening  
9 statement at this time?

10 MR. MINNS: Yes, very much, Your Honor.

11 THE COURT: Your floor, sir.

12 MR. MINNS: And we have three charts, but I'm going  
13 to start talking and then set the timeline chart up if we can  
14 in a second.

15 THE COURT: Is it available electronically?

16 MR. MINNS: I don't know, Your Honor. I'm a complete  
17 computer incompetent.

18 MS. ARNETT: Yes, it is.

19 THE COURT: Are you prepared to present it in that  
20 manner?

21 MR. MINNS: I haven't prepared at all. I just  
22 used -- I just used the boards, but it's exactly what I gave  
23 the Court and what I gave to the -- one change I just hand  
24 wrote a car on there.

25 THE COURT: Yeah, I don't want to interrupt your

1 presentation. If you'd like to do it, as they would say, old  
2 school, we're comfortable with that.

3 MR. MINNS: Yes, sir. We'll show the white side  
4 first because I want to give a little background information,  
5 and the reason I'll show the white side first is because it's  
6 more interesting than I am, and you won't listen to me.

7 So I'm not going to introduce everybody to you again.  
8 The only important person -- really important person at our  
9 table is the guy you're judging, Jim Pieron, and you know him,  
10 you've seen him, that's Jim Pieron. And I apologize, but --  
11 for not introducing everybody but I don't see the value in the  
12 time.

13 James' background briefly; he was born in Livingston  
14 County out of Detroit. Graduated from high school in 1987.  
15 Nobody in his family had ever had a college degree until his  
16 mother married one of the witnesses in this case many years  
17 later who had the first college degree.

18 James finished high school and his best friend Gordon  
19 says, we're going to join the Army, so James wasn't as tall and  
20 healthy then. He grew a foot in the Army. He was a little  
21 kind of spry kind of a guy, and God knows how he survived it.  
22 He didn't see action in war. I'm not suggesting that, and when  
23 James was given a medal, he tried to turn it down because he  
24 didn't think he deserved it, and I'll get into that in a  
25 second.

1                   So James goes into the Army. He does testing and  
2 they say, you need to be in computer school. They send him to  
3 Germany first before the testing. In Germany they're figuring  
4 out the logistics for Desert Storm and other areas, and the  
5 whole computer breaks down, so the commanding officer can't get  
6 anybody to get the computer up, so nobody can be sent where  
7 they're supposed to be sent. The planes are stuck. The men  
8 are stuck. Nobody's transferred. Germany's where they're  
9 transferring everybody.

10                  So the commander says, I need help. Somebody fix it.  
11 I don't care who you are, whether you're qualified or anything  
12 else, and at this time, James wasn't qualified, but he said  
13 he'd give it a shot. So five days and nights he gets the  
14 computers back on, he gets a medal. He says he didn't earn the  
15 medal, he didn't do what other people had done, but they give  
16 it to him anyway.

17                  He spends one year helping the FBI analyze computers  
18 and fingerprints and then gets a job offer in Switzerland,  
19 which is mind blowing to him. It's with UBS Bank. It's  
20 exciting, it's exotic, and he goes to Switzerland, and he works  
21 for UBS Bank for many years.

22                  Now the timeline.

23                  THE DEFENDANT: Do you need some help?

24                  MR. MINNS: Yes, please. Ron, could you help us,  
25 too, please.

1 MR. BRAVER: Yeah.

2 MR. MINNS: Thank you very much. In order to  
3 understand all this stuff, you got to kind of go through the  
4 timeline of what happened. This is the timeline of what  
5 happened, and I stuck this in here -- you can see I'm not an  
6 artist. I want to talk about Komplique, because the Government  
7 has made a big deal about that Mercedes and said James should  
8 have turned the Mercedes over to the Government. I'm going to  
9 get to that.

10 So he's in Switzerland, almost all the time for 10  
11 years. He files Swiss tax returns. He pays Swiss taxes. He  
12 does not know he's supposed file American taxes, and most  
13 people don't. The Taxpayer Bill of Rights requires the  
14 Government to tell us these things, but they don't do it, so we  
15 guess when we're in an exotic situation, and we bump into walls  
16 or we hire experts. James hired an expert. Ph.D. expert,  
17 Switzerland, knows everything, and the expert screwed it up  
18 horribly. I'll get into that in a second.

19 One year James moved back to the United States,  
20 before he went back to Switzerland, and in that one year he  
21 files and pays taxes in the United States and doesn't file and  
22 pay taxes in Switzerland. Then he goes back to Switzerland and  
23 continues to do -- follow Swiss law, paying taxes, filing tax  
24 returns, he doesn't prepare tax returns. He doesn't know how.

25 Now a period of time comes out later where his father

1 in law -- his stepfather, excuse me, is talking to him and he  
2 says, you might owe taxes in the United States, and you might  
3 have to file a United States tax return. So he gives him a  
4 power of attorney, and his father-in-law had been -- his  
5 stepfather would be the most highly educated person in his  
6 family, he'd been in banking, he's a smart guy, and he does the  
7 research.

8                   Later, his father-in-law contacts him and says you do  
9 have to file in the United States. Now, this shocked him to  
10 death because the Swiss expert didn't tell him that. Didn't  
11 tell him you need a US CPA, even though you haven't stepped  
12 foot on US soil except for one year in the last 10. The Swiss  
13 guy tells him he's paid everything he's supposed to do, and  
14 he's done everything he's supposed to do.

15                  Well, he goes with his stepfather over the expert.  
16 His stepfather files the returns for 2001 to 2006 for him, and  
17 pays the taxes that are due on them. But then his stepdad also  
18 says, son, this 2007 and eight is way too complicated, hugely  
19 complicated, and I can't do it. You're going to have to find  
20 somebody else.

21                  Now why is it hugely complicated? Well, when you are  
22 starting a startup, and 80 percent of startups fail in the  
23 first year, and most of James' had failed, but some of them had  
24 succeeded, and everybody losses all their money, but when  
25 you're starting a startup, normally you will trade stock for

1 investment capital, and it goes directly into the company, and  
2 there's no taxes paid.

3 The Swiss guy told him you get the money and then put  
4 it in the company. Well, if he gets the money, and then puts  
5 it in the company, it is taxable. It caused a huge tax  
6 liability that James had no clue he owed, and the first thing  
7 the Government will fail to prove, beyond any doubt, but they  
8 only have to prove it beyond a reasonable doubt, is that James  
9 understood the tax laws. Because nobody, nobody would  
10 intentionally misdo the paperwork and owe taxes if you can do  
11 it correctly and avoid the tax.

12 And a few times Ms. Parker accused Jim of avoiding  
13 taxes. That is legal. It is evading taxes that is illegal.  
14 Every CPA that gets hired is told get me the best deal you can  
15 honestly, and that's their job. And, yes, you can create  
16 things that increase your taxes.

17 Now, I agree with Ms. Parker on this, and the judge  
18 will give us our instructions and our orders. We may agree or  
19 disagree with the confusion in the law itself. It doesn't make  
20 sense why if you do your paperwork right, you owe no taxes, and  
21 if you do your paperwork wrong, you owe \$500,000. It doesn't  
22 make sense. That's not for us to deal with. The only question  
23 is did he understand fully and completely his obligations, and  
24 knowing them, decide to screw himself up so that he owed more  
25 money than anybody else would give it.

1                   Later on you're going to find with better tax  
2 advisors, he doesn't owe the money. There's no possible way.  
3 The Government would have to say that he's an idiot, and he is  
4 no idiot, to intentionally pay more taxes than he owes, to  
5 intentionally create paperwork that makes him pay more than he  
6 owes. That's the basis of the case.

7                   So James is preparing to move back -- oh, the name.  
8 I think I said this the other day, but he's been Jim Pieron all  
9 his life. Then he got in the Army and he became Jim Pieroini  
10 (ph), because that's what the commanding officer called him.  
11 Pieron. You don't get to choose in the service what the  
12 commanding officer calls you, and so he's James to them, and  
13 he's kept his legal name since then, so you may see some  
14 confusion; sometimes he's Jim, sometimes he's James. That's  
15 the reason why. He's not trying to hide his identity.

16                   So Jim has to find someone to prepare the complex  
17 returns where one investor, over a period of four years, put  
18 \$15 million into his company. Now, part of that money -- one  
19 of the companies that he got 35 percent ownership, and I'll  
20 guarantee, when an investor puts money in a company for stock,  
21 you don't get to say, I'm going to do whatever I want with the  
22 Mercedes. You don't get to do that. You don't get to say to  
23 the investor, I'm going to use your money to pay my taxes. You  
24 don't get to do that.

25                   So he hires a company, finds a company called ATS

1 which advertises a lot and says we can do just about anything,  
2 and we've got the best preparers and the best lawyers and  
3 everything, and he doesn't know this, many people have turned  
4 him down. Some of the people have turned him down because the  
5 investor -- he had several investors, and the investors wanted  
6 huge amount of paperwork, huge amount of stuff, a lot more  
7 stock, and one investor wanted almost nothing, and so he took  
8 that investor, and he said I'll move instantly.

9 So the utilities had been turned off, the  
10 refrigerator was empty and he took the guy that says just sign  
11 this tiny piece of paper. Well, that guy was not an honest  
12 man, and when that guy got involved, the bank that was doing --  
13 I'm going to talk about two main business areas for James. The  
14 bank that was doing -- working on his -- on his algorithm said,  
15 I'm sorry, we like you, but we're not going to do business with  
16 you anymore and it put the company under.

17 So there's two things that James was doing in this  
18 time. One of them was -- he's doing so many businesses it's  
19 not funny. When the Government complains that money is moving  
20 back and forth, money's not moving to Switzerland.

21 If the Government -- the Government is claiming --  
22 we've all seen the movies about people going to Switzerland and  
23 moving their money to Switzerland. The money's coming from  
24 Switzerland to the United States. If you're going to cheat on  
25 your taxes, you don't -- thank you. Thank you. Sorry about

1 that. Thank you very much, sir.

2           If you're going to cheat on your taxes, you don't  
3 move money from Switzerland to the United States. You move  
4 money from the United States to Switzerland. He wasn't trying  
5 to cheat on his taxes. He was trying to get -- raise as much  
6 money as he could to run his different brands.

7           One of the brands -- and that's what I did up here --  
8 the Government said that he had this luxury car, a Mercedes.  
9 Well, it's a pick-up truck, and it was owned by Komplique,  
10 which he no longer had dictatorial control over, and Komplique  
11 designed women's swimwear and women's swimwear had luxury  
12 events. James would play during some of the events the piano.  
13 He learned to do that in the military.

14           James had to have a certain level of high quality to  
15 get the swimwear sold. The swimwear brand, yes, it owned  
16 the -- the company did own the Mercedes, and the Government  
17 knows that. The Government's been following this guy for 10  
18 years now. Everything he does. They followed the office  
19 manager in that Mercedes as she drove to the hair salon, nail  
20 place, and they followed her there, and that's in this  
21 gentleman's -- who's sitting at the table, he followed her  
22 there. They're following everything and their family. They're  
23 followed everybody and him. They followed the Pieron family in  
24 Germany, and it turns out -- and there's records on that -- and  
25 they weren't related to Jim in anyway, but they've been

1 followed.

2                   So they know that it was owned by Komplique, and they  
3 know that it was used by Komplique, and did James ever haul the  
4 boards and bags and boxes and swimsuits and stuff in that?  
5 Yes, he did. That's what it was for. It was intended to be a  
6 luxury brand. The investor knew about it and approved of it.

7                   But when the Government says that James lied on his  
8 report -- first of all, they said he lied and said the company  
9 was worth \$1,000 and they own a Mercedes. That's just not --  
10 that's just not fair math. The company had -- was not worth  
11 \$1,000. It had negative value. It was worth a minus value.  
12 They had salaries they had to pay. They had bills they had to  
13 pay. They had sort -- huge obligations, and the -- the -- the  
14 car -- if you own a house and you have a \$100,000 home, you  
15 have \$50,000 worth of debt, you have \$50,000 worth of value.

16                   If you own a home that you paid -- borrowed \$100,000  
17 for, or paid cash for it, and it drops in value to 50,000, you  
18 don't have -- you don't have \$50,000 worth of value, and that's  
19 just not an honest accounting. But here's the thing, it's kind  
20 of throwing us off the whole case. It doesn't matter what you  
21 put on the statement, it doesn't raise your taxes a penny or  
22 lower them a penny, so it's kind of a rabbit trail.

23                   And when the Government complains that he didn't get  
24 all the materials to the first taxpayer -- to the first tax  
25 preparer, that doesn't mean anything either. He told her he

1 had \$9 million of capital gains. That's it. Anything you  
2 don't add to that lowers your taxes; doesn't raise your taxes.  
3 So most of us aren't prepared to go back six, seven, eight  
4 years and prepare tax returns. He did it. And he -- when he  
5 did it, it was a red flag to the IRS. An honest person doesn't  
6 send red flags to the IRS -- a dishonest person doesn't send  
7 red flags to the IRS, an honest person might.

8 So he hires ATS and Carol Nathan gets it, and I've  
9 never met her, I've never talked to her. I wouldn't be able to  
10 recognize her, you know, in the courtroom until I get an  
11 introduction, but what we know about Carol Nathan is that she  
12 never told Jim, after he talked to the highfalutin salesman,  
13 she never told Jim she was not a CPA. She never told Jim she  
14 was not an enrolled agent. She never told Jim that her total  
15 tax education was at one of those window shops H & R Block or  
16 Hewlett, whatever -- I'm getting the name wrong -- but she had  
17 worked for them, and they take a short course, and she had one  
18 accounting course in college, which did not include taxes. She  
19 was an education major.

20 And I'm not saying she wasn't competent to do simple  
21 tax returns. I just don't know. I am saying she was not  
22 competent to do this tax return, no way possible. And James  
23 had talked to the highly sophisticated lawyer salesman, and he  
24 hired that firm. He was desperate to get someone to get this  
25 stuff done, and he thought that he might owe some taxes because

1 he had on earlier years, and I've got another chart for you.

2                   He started as early as 2010 overpaying the taxes, all  
3 these payments, every year, and the 1,500 that Ms. Parker was  
4 gracious enough to say that he was offering to pay each month.  
5 He paid that for a while, in addition to all the other tax  
6 payments, and every year he overpaid his taxes, and every year  
7 the Government took that and applied it to what they thought  
8 might be owed or might not be owed, all these, and they never  
9 contacted him. They never said anything was wrong. They never  
10 responded to him.

11                   The Taxpayer Bill of Rights requires them to answer  
12 you, and it requires them to answer you politely, which we know  
13 sometimes they fail to do. So he's made massive amounts of  
14 payments before the return was filed, because he had trouble  
15 getting someone that would file the return for him, and after  
16 the return was filed, the payments never stopped. The \$1,500 a  
17 month payments were made because Mr. Pavlik told him -- and he  
18 was nervous about Ms. Nathan. He was nervous, and he told her,  
19 I need -- I want to talk to a CPA, do you mind? She says, no,  
20 go ahead, but I can do it all. I don't need the help of a CPA,  
21 and he's in contact with one of the top CPA's in the state of  
22 Michigan, and he's trying to get him to take over.

23                   And Mr. Pavlik is very good, has a great reputation,  
24 has top flight credentials. He's also hard -- he's also hard  
25 to hire, but when James met him he knew this was a man he could

1 trust. This was a man who had all the credentials, so he's  
2 asking them to get touch, and she doesn't think she needs any  
3 help, she's not in over her head, but -- and she doesn't bring  
4 in any of the attorneys but she -- oh, this is a huge  
5 organization, which is now out of business, and operates -- all  
6 the people operate under different names now, a huge  
7 organization doing lots of advertising, we can fix anything,  
8 we're experts in anything, and they don't have any CPA's  
9 working for them.

10                   All the tax returns in this huge organization go to  
11 Ms. Carol Nathan. She's the one that's supposed to do all the  
12 work. Nobody knows that. They don't tell you that when you go  
13 and hand them your money and hire them. So he wants to get  
14 that return filed, he's desperate to get a return filed, and  
15 what Ms. Carol Nathan should have done is attached, as  
16 Mr. Pavlik did to everything he wrote, attach an explanation to  
17 the tax return. The top flight people do that when it's  
18 confusing or aggressive or unusual. They will type out their  
19 theories and reasons why the return will have to be amended.

20                   You want to get it on file as fast as you can.  
21 There's penalties and interest for filing late, which he's  
22 paid. There's penalties and interest for not filing, which  
23 he's filed, and there's penalties and interest on paying late.  
24 The more you get filed, the sooner you lower the penalties and  
25 there, but they're huge. They're humongous penalties and

1 interest, so he's desperate to get stuff in and to start  
2 payments out.

3 So even before this return is filed, he's starting to  
4 make payments. He doesn't think he'll owe much. He can't  
5 imagine how he could owe much because he's already had five  
6 years where he owed almost nothing. He's paying himself the  
7 largest wage he's ever made in his life; \$7,500 a month, and  
8 he's also withholding every check on that 1,700, and he's  
9 thinking, you know, I'm overwithholding, I'm safe.

10 He wasn't safe. The return gets filed. He's in a  
11 huge panic. Mr. Pavlik says, I will work on it. Now, the IRS  
12 has something called a 1040X. We didn't create this form.  
13 It's for when the return has to be amended. Because millions  
14 and millions of mistakes are made every year on tax returns and  
15 Congress has given us the ability to amend the return,  
16 sometimes twice, three, four, five times. An amended return is  
17 common. I do not believe any CPA that you would hear from has  
18 never amended returns. They do it all the time, and it's in  
19 the law and the statutes.

20 Now, if you amend the returns, you go by the amended  
21 return. IRS refused to do that. He hires Mrs. Pavlik in  
22 December of 2010, but Mr. Pavlik's ability to get the work  
23 filed and everything else would be later. It takes time to get  
24 this stuff done.

25 Now, here's what happens in 2011, and this is

1 something that most of us don't know about. We all have a  
2 computer file in Martinsburg, West Virginia, where the IRS has  
3 everything we've every filed, all the information on us  
4 attached into a computer file. If they type in "freeze code  
5 Z914" you're not allowed to -- they're not really allowed --  
6 the law doesn't allow them to stop talking to you, but  
7 everything at the IRS is told we can't talk to you, because  
8 we're going to try to put you in prison.

9           But they don't tell us that. It's secret. We don't  
10 know about it. It shouldn't be. It should have been changed  
11 the when they passed the Taxpayer Bill of Rights, and you may  
12 hear from some experts that say that, that this is no longer  
13 appropriate, but it was done.

14           So now with this freeze code on, after him, January,  
15 2012, Mr. Pavlik files the first amended return, and here's the  
16 interesting thing. He has more information, so the tax return  
17 for 2008, which he's going to amend again, he's told the  
18 client, shows more taxes due than the original return in 2008.  
19 The tax return in 2009 shows less taxes due than the original  
20 return in 2009, and so the IRS accepts the higher one here, and  
21 the higher one here and refuses to process the correct ones in  
22 either year, but they don't -- refusal is a polite word. They  
23 won't talk to him at all.

24           Mr. Pavlik files an installment agreement and he  
25 tells James, we're going to start out, pay somewhere between

1 1,000 to 2,000 a month and sit down at a table and figure it  
2 out what can make everybody happy. So James, being the  
3 computer guy, what's between 1,000 and 2,000? It's 1,500. The  
4 very next month James starts making \$1,500 payments, in  
5 addition to the excess payments he's already making every month  
6 on the board which we saw.

7 Now --

8 THE COURT: Mr. Minns --

9 MR. MINNS: Yes, sir.

10 THE COURT: -- if I could take just a moment.

11 I've not been introduced to Juror No. 14, would be  
12 Mr. Brancheau, am I saying that correctly?

13 JUROR NO. 14: Yeah.

14 THE COURT: It doesn't appear to me that you're  
15 completely appreciating the opening remarks.

16 JUROR NO. 14: No, I wasn't appreciating getting  
17 selected.

18 THE COURT: Pardon me?

19 JUROR NO. 14: I wasn't appreciating getting selected  
20 for jury.

21 THE COURT: Yes.

22 JUROR NO. 14: Yeah, I don't get involved in that  
23 stuff.

24 THE COURT: Well, you are now. You've been through  
25 the selection process. Is there a way that we can make this

1 process easier for you to pay attention?

2 JUROR NO. 14: No.

3 THE COURT: I want to make sure --

4 JUROR NO. 14: No.

5 THE COURT: -- that you --

6 JUROR NO. 14: No.

7 THE COURT: Understanding, of course, that you are  
8 selected and will remain, correct?

9 JUROR NO. 14: I don't know.

10 THE COURT: I do. I want to make sure that you are a  
11 good effective juror and if there's anything that we can do to  
12 assist you in that process, we will do it, within reason.

13 Would you like a break?

14 JUROR NO. 14: I'd like to get out of here. I don't  
15 like this sitting in a courtroom all day.

16 THE COURT: You had your opportunity to express that  
17 during jury selection. Is there anything that we can do at  
18 this the stage to --

19 JUROR NO. 14: No, I just don't like hearing gossip.

20 THE COURT: You don't like hearing?

21 JUROR NO. 14: Gossip, yep.

22 THE COURT: Well, shortly we'll be hearing testimony.

23 Mr. Minns, I apologize for interrupting. We will  
24 take a break here in a little bit, but I wanted to make sure  
25 we'd had a discussion with the gentleman. I apologize for the

1 interruption.

2 MR. MINNS: No. Thank you, Your Honor. And this  
3 might be an appropriate time to take a short break, and then we  
4 could have -- if the Court would allow a sidebar, please.

5 THE COURT: Certainly.

6 We will take about a 10 to 15-minute morning break.

7 Please rise for the jury.

8 (At 9:54 a.m., jury leaves; Juror No. 14 remains.)

9 THE CLERK: Sir, if you want to come around this way.

10 JUROR NO. 14: No, I want out of here.

11 THE COURT: You need to follow the rest of the jurors  
12 out, sir.

13 JUROR NO. 14: I want the fuck out of here. Got  
14 better things to do than come in here.

15 (Juror No. 14 leaves.)

16 THE COURT: Record will reflect the fact that we are  
17 outside of the presence of the jury.

18 MR. MINNS: I don't know the people in the audience,  
19 Your Honor. Would it be all right if we approached at side --  
20 I don't know who's still in the audience. I'd rather --

21 THE COURT: We can handle it at sidebar.

22 MR. MINNS: Thank you.

23 (Sidebar conference as follows:)

24 THE COURT: All right. I'm really happy that I'm not  
25 responsible for this selection.

1                   MR. SASSE: Are you aware that 13 and 14 are the  
2 alternates? He's the second alternate, which is why nobody  
3 really --

4                   MR. MINNS: I asked the Government if they would  
5 agree to strike him and could not get a positive response.

6                   MS. PARKER: Well, I don't want him reading lips or  
7 anything. I didn't know if he could see us. We can address it  
8 but --

9                   MR. MINNS: I have something else to add, too, if the  
10 Government chooses to object to strike him, we watched when the  
11 clerk administered the oath, every juror but him raised their  
12 hand. Every juror but him seemed to move their mouths and say  
13 something. He was not looking at the Court. He did not raise  
14 his hand, and he did not move his mouth. He is not sworn in.  
15 I move to thank and excuse that alternate.

16                  THE COURT: I don't think we need to thank him for  
17 much, but --

18                  MR. MINNS: Well, I just don't want to be picking on  
19 a juror --

20                  THE COURT: Sure.

21                  MR. MINNS: -- in front of the other jurors.

22                  THE COURT: I appreciate that. I think it's  
23 reasonably apparent, based on the behavior that he exhibited  
24 with the clerk yesterday, in which I asked them to summarize so  
25 that you were ma least aware of that set of circumstances, that

1 we have not only someone that is not going to be receptive in  
2 an impartial way, but is by all appearances not competent to  
3 assist in understanding any of the information.

4                   He is avoiding eye contact. He's covering his eyes.  
5 He's not going to be a good juror for anyone, notwithstanding  
6 the fact that we're unfortunately going to have to exercise  
7 early in the case where we don't necessarily know who else may  
8 have emergent problems.

9                   Government have any opposition to excusing him?

10                  MS. PARKER: No, Your Honor --

11                  THE COURT: Only other question from my point of view  
12 is how we handle that. I want to make sure that we aren't  
13 providing an opportunity --

14                  MS. PARKER: Incentive.

15                  THE COURT: Incentives for other -- for other folks  
16 to develop unexpected problems. And I'm also concerned that,  
17 at least on the way he exited the courtroom, that he has the  
18 ability to get physical. He was -- so one approach would be  
19 simply to call him directly into the courtroom, excuse him,  
20 have the court security officers see him to the exit, return  
21 with the jury, explain that it became readily apparent to us  
22 that he was going to be an ineffective juror and they're to  
23 disregard any of his comments during the course of their  
24 contact.

25                  MR. SASSE: That's fine.

1                   MR. MINNS: I have one unrelated thing that I don't  
2 think I brought up with the Court. I have a medical condition  
3 that I'm -- sometimes I can go 15 minutes, on a good day I can  
4 go an hour, an hour and a half, and sometimes I'm normal, but I  
5 have to go to the bathroom frequently. I have been to Mayo  
6 Clinic, and it's a challenging problem. It doesn't really --  
7 I'm healthy, but I would like --

8                   THE COURT: And age doesn't help.

9                   MR. MINNS: No, it's worse now than it was 10 years  
10 ago.

11                  THE COURT: Not surprised.

12                  MR. MINNS: But on occasion I --

13                  THE COURT: Would you like to go to the bathroom,  
14 Mr. Minns?

15                  MR. MINNS: Very good, Your Honor. But what I'm  
16 saying is this: If on occasion when Ken is taking a witness or  
17 Ashley is taking a witness, if I can very quietly walk out to  
18 the bathroom and come back without interrupting in any way, I  
19 would appreciate that.

20                  THE COURT: And I think we can explain to the jury  
21 that there's a medical necessity for you to take a break.  
22 Comfortable with that?

23                  MR. MINNS: Yes, Your Honor. I don't really want  
24 them to see me. I try to go out because I don't want to --

25                  THE COURT: We won't let them into the bathroom, if

1 that was your concern.

2 MR. MINNS: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 MS. PARKER: Judge, to go back to your question, your  
5 proposal, at least from my perspective, I think is a very sound  
6 one, and I expect will be accompanied with some sort of warning  
7 to the rest of the jurors that his behavior was exceptional and  
8 we're not trying to reward bad behavior. We expect everybody  
9 else to soldier on, shall we say.

10 MR. MINNS: I think he has a medical problem, and I  
11 think that the jurors could say -- one of the jurors said very  
12 substantial medical problem that was not picked up the other  
13 day, but --

14 MR. SASSE: I think it was beyond a medical problem.

15 MS. PARKER: I think it's attitudinal, but it is a  
16 problem --

17 MR. SASSE: It's a problem.

18 MS. PARKER: -- of whatever magnitude or origin.

19 THE COURT: Okay. Let's see, anybody have the  
20 correct pronunciation of his name?

21 THE CLERK: Brancheau.

22 MS. PARKER: There you go.

23 THE COURT: Are you comfortable with us handling the  
24 disposition of Mr. Brancheau.

25 MR. MINNS: Absolutely, with either of my cocounsel

1 or both of them.

2 THE COURT: Very good.

3 (Sidebar conference concluded.)

4 THE COURT: Would you gentlemen assist us with  
5 retrieving Mr. Brancheau.

6 (Juror No. 14, Mr. Brancheau, arrives; outside the  
7 presence of the remaining jury.)

8 THE COURT: Mr. Brancheau?

9 JUROR NO. 14: Yeah.

10 THE COURT: You appear to be a reluctant juror.

11 JUROR NO. 14: Right.

12 THE COURT: How did you get through the day?

13 JUROR NO. 14: I -- I told them that I was a  
14 diabetic. I don't feel good before they select me, and they  
15 still selected me. I don't feel good and my stomach and --  
16 I -- I had the runs today, and I don't know, today's my day I  
17 don't feel good, you know. I take medicine. I take shots.

18 THE COURT: How did you get to court?

19 JUROR NO. 14: Bus.

20 THE COURT: You have a concern with respect to your  
21 medical condition and your ability to focus on the evidence?  
22 Is it going to be hard for you to listen?

23 JUROR NO. 14: Yeah, it is sometimes -- sometimes my  
24 foot hurts here. I got pain pills at home I take.

25 THE COURT: Do you have a way home?

1                   JUROR NO. 14: Yeah.

2                   THE COURT: I've had a chance to speak with the  
3 attorneys, both for the Government as well as the defendant.  
4 We believe that it's appropriate to excuse you from service on  
5 the jury.

6                   JUROR NO. 14: Okay. Thanks. Because, you know,  
7 sometimes -- sometimes I get dizzy, or sometimes I get tired,  
8 like I'm tired today. And I got to go to the bathroom, you  
9 know, and -- thank you. Yeah, I got toes amputated. I had to  
10 retire two years ago. I don't know if I'm coming or going  
11 sometimes.

12                  THE COURT: Well, we appreciate your attendance.  
13 These gentlemen will see you out. You'll be excused from the  
14 further service on the jury. Thank you.

15                  JUROR NO. 14: Okay. Thank you.

16                  THE CLERK: Do you have anything else in the jury  
17 room?

18                  JUROR NO. 14: I got my jacket and sweatshirt, so  
19 they'll take me back.

20                  (At 10:08 a.m., Juror 14 excused.)

21                  THE COURT: We'll take our brief recess right now.  
22 Just to update counsel, the gentleman had essentially locked  
23 himself into the men's room, was not responsive to any of the  
24 inquiries. As a result, the jury, either on their own motion  
25 or otherwise, simply went out to one of the other narthex

1 sections of the building where they remained until he exited,  
2 and they will be at this stage going back to the jury room for  
3 a short period of time, while we take a recess because they  
4 want to get back to Mr. Minns' opening statement.

5 MR. MINNS: Thank you, Your Honor.

6 THE COURT: So about five minutes and we'll return.

7 Record's closed.

8 (At 10:10 a.m., court recessed.)

9 THE COURT: Counsel, before we entertain the jury,  
10 pursuant to our discussion at sidebar, we'll try to provide the  
11 jury with an explanation for our decision that, as I believe  
12 one of you said, doesn't furnish an incentive for other jurors  
13 to develop problems, and then we will pick up with your opening  
14 statement, sir.

15 MR. MINNS: One more thing, Your Honor, I apologize,  
16 this just came off -- I've shown it to the Government, but we  
17 don't -- the client's staff made this, and we just got it a few  
18 minutes ago, and it's one chart that we don't have a small one  
19 to hand the Court. It's a list of fees and things he paid CPAs  
20 and attorneys to help him with that.

21 MS. PARKER: I don't know the relevance of it. I  
22 mean, I don't -- he apparently wants to use it in his opening  
23 statement?

24 MR. MINNS: State of mind is this whole case and if  
25 someone's trying to follow the law, paying a whole bunch of

1 money to people to tell him what the law is is extremely  
2 exculpatory.

3 THE COURT: I don't -- if you don't have any  
4 difficulty with the accuracy of the information --

5 MS. PARKER: I do. I have no idea the foundation for  
6 any of it.

7 THE COURT: All right.

8 MS. PARKER: We have nothing supporting this. We  
9 have no reciprocal discovery that enumerates anything that's on  
10 that chart.

11 THE COURT: You'll have a chance to review it in  
12 preparation for closing statements, then. We will please not  
13 use that until the Government has had a chance to review it --

14 MR. MINNS: Yes, sir.

15 THE COURT: -- and I'm assuming that in reciprocal  
16 discovery that there has been supporting evidence for those  
17 numbers furnished to the Government?

18 MS. PARKER: There has not. There has been no  
19 reciprocal discovery supporting any of those charts that have  
20 been provided and shown already two of them to the jury.

21 MR. MINNS: I disagree with that. I -- this may be  
22 the case but, yes, most of those records came from the  
23 Government.

24 THE COURT: The jury, please.

25 (At 10:25 a.m., jury arrives.)

1                   THE COURT: I told you you'd get a handle on it. You  
2 nailed it. We are at this point without Juror No. 14. My  
3 understanding is that he was a bit less than cordial to you,  
4 and that as a result of that and our conclusion that he was not  
5 going to be an effective and impartial juror, we excused him  
6 from service.

7                   I do want to make a note, however, that that should  
8 not be considered an incentive on your part. You are sworn as  
9 the jury to try the case, and absent a true legitimate  
10 emergency, you're with us for the balance here. So please be  
11 seated.

12                  Mr. Minns, we apologize for the interruption, if  
13 you'd like to continue, sir.

14                  MR. MINNS: Thank you.

15                  May it please the Court, I get the word wrong so I  
16 had to write it down, derivatives. This is not going to be a  
17 brilliant explanation of what derivatives are, but it's what  
18 James has done since he started his own company. It is not the  
19 fashion business, which he no longer has any interest in. He  
20 still has an interest in it. It was just bought out. He  
21 doesn't own any of it, and it was bought out for next to  
22 nothing.

23                  But derivatives. So when we say we want to buy a  
24 share of stock, say it's Apple or Google or whatever, someone  
25 says I offer -- this isn't the correct figure, \$200 for the

1 Apple stock, and someone says I will sell my Apple stock for  
2 \$199.95, and what you see on the boards are the highest offer  
3 and the highest sale price, and they connect. They meet and  
4 then a sale is conducted, but there's something called  
5 derivatives, and they don't work that way.

6 And the stock market is tiny compared to the  
7 derivative market. The derivative market moves dollars into  
8 pesos, pesos into Swiss francs, dollars into British pounds,  
9 and it is 100 times larger than -- the derivative market is 100  
10 times larger, but it's not so clean. There could be a thousand  
11 different prices in one minute, in one nanosecond for Swiss  
12 francs, and at the same time three or 4,000 for dollars and you  
13 don't get to see them. There's no central organizing  
14 mechanism.

15 So what James completed, and his military computer  
16 work, his college, it all came into that, he completed an  
17 algorithm which would allow a near instantaneous connection  
18 with the best price. The UBS Bank made a fortune waiting  
19 tenth, hundreds of a second to buy or sell, so if you put your  
20 money to them, a dollar, and I want to have the same amount in  
21 Swiss francs, maybe it's 99 cents, and they hold it a  
22 nanosecond, and it goes down to 98.999, and they make that  
23 money. They hold it that nanosecond routinely. But if it goes  
24 up, they say, oh, we can't make your offer, it went up to  
25 999.00001, and as normal consumers we don't see that. It's so

1 fast we can't see it.

2                   So James invented an algorithm which would allow  
3 people to see it in realtime, and the algorithm went in  
4 milliseconds, that means a thousand computations a second, many  
5 milliseconds. That's humongous. That's old fashioned now, but  
6 milliseconds allowed him to create this device, and it was  
7 worth a fortune. You couldn't use it unless you had a lot of  
8 money, because you had to have a connection with a major bank  
9 that had connections with all the different banks, and you had  
10 to have many millions of dollars to have the money on file to  
11 get it.

12                   But Terry, the billionaire that ended up buying this  
13 at a fire sale for a quarter of a million dollars, it saved him  
14 more than 7 million a year, so it was very valuable. It wasn't  
15 valuable for me or you all if you want to go to Mexico because  
16 you've got to have millions and millions of dollars, and James  
17 was bothered by that. And several years later he came up with  
18 a solution once computers could calculate in microseconds,  
19 millions of computations a second, and he created an algorithm  
20 which fit on an iPhone, and it's being sold in Hong Kong as we  
21 sit here, but it is not available to American citizens. James  
22 missed the grand opening because he was not able to leave  
23 because of the IRS investigation, so he missed -- he missed  
24 that.

25                   I'm -- it's important to understand these things are

1 valuable, and people weren't making huge investments through  
2 something that didn't have a great deal of value and great deal  
3 of uniqueness, and there's a huge demand if you want to go to  
4 Mexico or Canada and you want to convert your money and not  
5 sending that money off to let the large bank -- and those of  
6 you who've gone through airports, you know that they go huge,  
7 huge differences, you can't even keep track of it. So this  
8 algorithm allows people to keep track of it. There's people  
9 that don't want to it on the market; there's people that want  
10 to own it, so now I'm backing up on the -- I'm backing up on  
11 there.

12 At this time, there's a time period where James is  
13 actively -- major business is in the earlier version, and it is  
14 making money, and he is employing people, and the state of  
15 Michigan has asked him to -- one of the reasons he came back,  
16 they've asked him to come here and set his business up in  
17 Michigan. This is his home. And he employed a whole bunch of  
18 his Army buddies and people that he admired greatly who had  
19 done things that he had not done, and he wanted to help them  
20 out.

21 And we're at this period now where Pavlik has filed  
22 the 1040X. Now, the Government has said they accept the  
23 validity of the returns, even though they're not accurate, and  
24 that's one thing that we agree on. The Carol Nathan returns  
25 were not accurate. The Pavlik returns were extremely accurate,

1 but they did not take advantage of unique new law, which  
2 Mr. Pavlik can explain far better than I can.

3 And in January of 2012, Mr. Pavlik filed the  
4 installment agreement, and according to the Taxpayer Bill  
5 Rights, the IRS is required to say yes, no, or we'll take this  
6 or we don't like this on your agreement, we won't do this.  
7 They refused to respond. Now, no one new exactly why, but the  
8 reason, they had frozen him out. I apologize. What did I do  
9 with my red pen? Sorry. I apologize.

10 The freeze code, the secret freeze code, they had not  
11 responded, but they still had an obligation to tell Mr. Pavlik  
12 we won't take it. At that point in time, March 2013, James was  
13 on the verge of the second, far more useful to us, but not as  
14 useful to the big people, the millisecond, and he tried to sell  
15 the company, because there was a period shortly around there  
16 where his wife had a miscarriage, and he was upset. He wanted  
17 this over with. He didn't care what it cost, or what he had to  
18 do to get it.

19 He had law firms working on it. He had -- this is  
20 five -- no, this is six years ago, more than six years ago.  
21 No, about -- well, it'll be six years ago when we hit March.  
22 He's trying to solve this problem. He's hired Mr. Pavlik, who  
23 is one of the finest CPA's in the state of Michigan. Highly  
24 recommended. Some of you may have remembered the rave reviews  
25 that he got from some of the other members of the jury on the

1 first day, who are not with us anymore. But Mr. Pavlik is a  
2 highly qualified CPA, expert, has never had an amended return  
3 rejected in his career.

4 The IRS doesn't even respond. James is having panic  
5 attacks. I don't want this over my life. We want to have  
6 kids. We want to get moving, and he can't sell the company  
7 because no one will buy the company because it isn't working  
8 yet. The algorithm on the iPhone isn't working, and it won't  
9 work. It won't work until all the way into July 2018. He will  
10 not have cracked that and figured it out how to make it work  
11 until then, so he can't even -- he can't get anything for it.

12 Now, Mr. Pavlik files another amended return for the  
13 2011 year saying that this company was worth a fortune and he'd  
14 lost it because the banking contact got dismissed, and he lost  
15 it because of the person who had been the original investor and  
16 he gets nothing for it. So he files this --

17 THE COURT: Sir, I'm not sure, because of the break,  
18 that you've had a chance to actually identify the name of the  
19 business for the jury.

20 MR. MINNS: I'm sorry, Your Honor. The -- may I go  
21 to counsel table?

22 THE COURT: Sure.

23 (Off-the-record discussion.)

24 MR. MINNS: ILQ. Thank you, Your Honor. That was  
25 malpractice, I apologize.

1                   The business that he's trying to get now is ILQ, and  
2 he has tons of funding for it. People want this invention, and  
3 the same billionaire that paid \$250,000 for the earlier -- is  
4 financing the thing, and he's financing this ILQ business, and  
5 he expects it to succeed, and, in fact, it is now on the verge  
6 of success in Hong Kong, and God willing it'll be a success in  
7 the United States.

8                   So -- oh, and this is really important, too, no tax  
9 is due for the investment this time, because it's done  
10 correctly. Because he's met experts who know how to do it  
11 correctly, and no tax is due and he pays his -- gets his salary  
12 from the company and pays. So if -- if Mr. Pavlik or any of  
13 the other experts had been representing him back here, we  
14 wouldn't be here. We wouldn't be here because no tax would  
15 have been due ever.

16                   And -- and right or wrong, that's the law, and ILQ  
17 doesn't cost taxes when this investment money comes in, and for  
18 the Government to suggest just because he received the  
19 investment money he can do anything he wants with it, pay his  
20 taxes, do that, that's just not so.

21                   The Government has said he bought a motorcycle. He  
22 bought a motorcycle with the money that he had from his \$7,500  
23 a month, which is not a small amount of money, but the -- the  
24 amended return that Mr. Pavlik creates and files -- and the  
25 Government said we're accepting all his returns. I don't know

1 what they mean by that. I think what they mean is they accept  
2 the returns if they like them, and it says they owe a lot of  
3 money, but if they don't like the return, they don't accept or  
4 reject. They don't say anything.

5 Mr. Pavlik files this return, and no response at all  
6 from the IRS. We're waiting. Do you agree with us? Do you  
7 disagree with us? Do we still owe this money that we  
8 incorrectly claimed earlier? What's the deal? Talk to us,  
9 please. No.

10 So in 2014, Mr. Pavlik tries to reach out to them  
11 again. He files a doubt as to liability, another form,  
12 offering to pay a small amount of money because he says we  
13 don't owe anything. If you get a penny, you're getting more  
14 than is owed, and this is a form created by the Federal  
15 Government, and what does the IRS do? They say, nope. Yes.  
16 Well how about this? Let's sit at a table.

17 And remember, they're required under the Taxpayer  
18 Bill of Rights to sit down and talk with us in a pleasant and  
19 decent manner, and to listen to what our experts say. They  
20 don't have to agree with us, but they're required -- no, we  
21 will not talk to you about this. We will not respond. We will  
22 not process this. We're just going to hold it, and we're going  
23 to keep sending you bills for one 2008 return and one 2009  
24 return, and we're choosing the amount that is highest on each  
25 one.

1                   Yes, you raised it for one year, we accept that. We  
2 processed that. We -- you lowered it for the other, we reject  
3 that. Once you said you owed these two figures, we will never  
4 let you file the 1040X. We're treating you a little  
5 differently than we're going -- than the law says to treat you.  
6 We're treating you -- we're giving you the freeze code.

7                   So now the Government's investigation continues.  
8 There's no surprise. There's no communication, but they're  
9 following his family members. They're following people that  
10 have the unfortunate habit of having the same last name but no  
11 relationship. They're following his office manager to the  
12 beauty parlor. They're following everybody, so they know  
13 something's not good. And all of a sudden, the Government, in  
14 2015 -- can you imagine that -- they say, hey, we can't compute  
15 stuff. We're not going to talk to you. We're not going to  
16 listen to your experts. We're not doing anything, but we want  
17 all your Swiss records. We can't get them. We want all of  
18 them. We're going to calculate things. They don't tell them  
19 why they want it really. They just say we want all of them.

20                   Now, what would a crook do? He'd say, no. He'd say  
21 no. No. Jim gives them every page he has, every page he can  
22 finds; 4,526 pages of bank records, he hands them over to them.  
23 This is almost four years ago. And he says, oh, thank God.  
24 They're at least asking for something. Maybe this thing will  
25 come to some kind of conclusion, and I've got my -- no, I don't

1 this is a correct day.

2                   Nothing happens for two years. No response on the  
3 return that you don't owe anything. No response on the  
4 installment agreement. No response on the amended return. Two  
5 more years. We're starting -- no response on all this extra  
6 money. IRS said why are you sending in extra money. No  
7 responses at all.

8                   Now, the Government says to Mr. Pieron, they say,  
9 Mr. Pieron, we want you to spend an entire day with two special  
10 agents and a handwriting exemplifier (ph). Would you do this and  
11 drive out there and spend the time with them making handwriting  
12 pages over and over and over and over again? I can't honestly  
13 tell you what I would have done if I had been representing him  
14 at that time. I never knew his name or never knew the  
15 algorithms or understood anything at all about it, so this is  
16 before any of the current team is available. He goes into the  
17 office and spends an entire day. One of the gentleman is  
18 sitting at the counsel table here, and there's another IRS  
19 special agent sitting there all day long and he does that all  
20 day long.

21                   Now, we're moving closer to the present and, finally,  
22 James' invention is getting really close, and the same  
23 billionaire that funded that is wanting more of the company and  
24 he makes an agreement with James. If you sell me control and  
25 let me move it to Australia, I'll give you some money. And

1 James said he'd do that as long as he didn't close down the  
2 Michigan office and let go all his -- all his military buddies,  
3 so they made the deal and got the money.

4           Shortly after he got the money, there's a bill from  
5 IRS for 2008. Now, it's not the original 400 anymore. The  
6 bill is \$627,244.62. Bear in mind, Mr. Pavlik does not believe  
7 he owes that. Jim does not believe he owes that. He pays it  
8 anyway. He uses the sweat from his business, and he pays it,  
9 the whole thing, and that was the next to last figure on that  
10 long, long chart of payments that he's been making to get this  
11 off his back since 2010.

12           It's still a concern to him, and at this time you can  
13 throw us in or tell him you don't talk to these people under  
14 any circumstances, but he says, I need security. All the other  
15 lawyers and CPA's didn't get it for me, and he goes to the IRS  
16 office, and he sits there for an entire day. Employees, 70  
17 people not having the boss around, but he stays there all day  
18 trying to get an appointment with someone to figure out if he  
19 owes something else, or if they claim -- not if he owes, he  
20 doesn't believe he owes, but he doesn't care anymore. He wants  
21 this off his back. So if I owe something, if you say I owe  
22 something, I want to pay it.

23           And at the end of the day they give him a toll free  
24 number. They say, we can't help you here. Now, is that  
25 because of the freeze code? Is that because of something else?

1 We don't know. He finally gets somebody on a telephone who  
2 gives him a number, and he writes out a check for that number  
3 in September, but that's after the indictment. That's for  
4 2009. He writes that check out. Now, during the phone call  
5 they hang up on him. He's not certain what he's heard or not  
6 seen. He can't get anybody else on the phone now, so that's  
7 what he does.

8                   And on July 18th, very important day, two things  
9 happen; our Government indicts him for criminal conduct,  
10 threatening everything that he has, and he gets a receipt from  
11 the IRS computer congratulating him, you don't owe anything for  
12 2008. You're paid in full for 2008.

13                   And there's something else that happens on that same  
14 day, which is four months after the payment has come in. The  
15 gentleman sitting at the table there is asked, has he paid his  
16 taxes? Because we're talking about 2008 and 2009. And the  
17 question is asked, that gentleman sitting at the table -- it's  
18 not really a question, it's kind of an answer. He's telling  
19 him what to say. "He has not fully paid his tax liabilities,"  
20 and the gentleman under oath say, "He has not."

21                   The gentleman under oath does not say to the grand  
22 jury, well, he's paid 2008, every penny we've asked him for.  
23 He doesn't say that. He doesn't say, there's some he hasn't  
24 paid, we don't agree with him. His answer is, "He has not."  
25 And the next question is, "Has he ever made full payments of

1 those taxes?" And the answer, under oath, which is not true,  
2 is, "No." Except that's the same day that four months later  
3 the IRS is sending him a tax for the calendar year 2008 saying  
4 he's paid in full.

5 This is a disputed balance. He doesn't owe a penny  
6 in tax under anybody's calculations. The IRS has decided if  
7 you file a bad tax return owing up to more than you actually  
8 owe, we will process it. And if James files a good tax return,  
9 they will ignore it. I mean ignore it. They won't talk to  
10 him. They won't talk to his representatives. They won't do  
11 anything. The only real response that he ever got was this  
12 indictment.

13 So the Taxpayer's Bill of Rights says that taxpayers  
14 have a right to know what they need to do to comply with the  
15 tax laws. They're entitled to clear explanations of the laws  
16 and IRS procedures and all tax forms. They have the right --  
17 taxpayers have the right to receive prompt, courteous and  
18 professional assistance in their dealings with the IRS, to be  
19 spoken to in a way they can easily understand, to receive clear  
20 and easily understandable communications from the IRS and to  
21 speak to a supervisor about inadequate service.

22 Taxpayers have the right to raise objections and  
23 provide additional documentation. The 1040X is additional  
24 documentation. To expect the IRS will consider their  
25 objections and documentation promptly and fairly, and to

1 receive a response if the IRS does not agree with them.

2                   Taxpayers are entitled to fair and impartial  
3 administration -- administrative appeal of most IRS decisions,  
4 including penalties and have the right to receive a written  
5 response regarding the office of appeals' decision.

6                   So as we sit here in the courtroom today, we've put  
7 the cart in front of the horse, because there is no audit.  
8 They've never agreed to one. There is no appeal. They've  
9 never agreed to even give him his appellate rights. There is  
10 no agreement that he owes a tax.

11                  And the first thing that he understood this complex  
12 law, beyond all reasonable doubt, and intentionally tried to  
13 break this complex law, we know for certain that's not even  
14 possible. Because if he knew when he first set these companies  
15 up that he would not have to pay a penny in tax if he filed the  
16 paperwork correctly, he wouldn't have filed it incorrectly. So  
17 he's paid money that he shouldn't have owed, that other people  
18 in the same position have not paid. He's paid it. He's made  
19 payments. He's been tormented for a decade now, he and his  
20 employees, they're followed wherever they're going.

21                  And just as an end result, he never stopped paying,  
22 but when he sold controlling interest of his invention, he paid  
23 this humongous bill. And bear in mind, this is not even what  
24 the IRS said he originally owed, 627,000. This is what he --  
25 this is what the incorrect return said in 2010, 400,000. This,

1 is a 50 percent penalty and interest on that alone. There's no  
2 possibility that this man owes an income tax. There's no  
3 possibility that this man tried to run away.

4                   Is there mistakes in paperwork? Constantly.  
5 Absolutely. Over and over again mistakes in paperwork, but  
6 there's no mistake in the income. He has told them what he  
7 got. The mistakes in paperwork hurt him. It doesn't hurt the  
8 Government, and none of these mistakes lowered -- lowered the  
9 tax. The mistakes raised the tax. None of these mistakes  
10 increased his availability.

11                   We have no burden to prove anything. The Government  
12 must prove -- the Government has alleged in its indictment that  
13 as of current date, the current date may have been July 18th,  
14 2018, or it may be today, it's not very clear to me, but it's  
15 been read to all of us, and it'll be read again, that he has  
16 not paid because he's trying to skip out of his 2008 and 2009  
17 tax return.

18                   And the Government wants some jealousy from us. They  
19 want jealousy. They say his company had this Mercedes, when  
20 the billionaire financed it. The billionaire bought a Mercedes  
21 for the new company that James doesn't even have controlling  
22 interest in. Why didn't James grab that stuff? Well, it just  
23 doesn't -- doesn't work that way, and it wouldn't make a  
24 difference anyway.

25                   When you're talking about \$627,000, \$18,000 is a drop

1 in the bucket, particularly when you have the right, you have  
2 the right to installment payments. If they don't agree, they  
3 have to say no. You have the right to negotiate if there's not  
4 a clear circumstance of tax debt, so all of his civil rights  
5 have been violated. All of his tax responsibilities -- the  
6 Government has said no to every responsibility that they've had  
7 to him. We're not going to answer for it. We're not going to  
8 give a reason. We're just going to ignore you, haunt you,  
9 shadow you, chase you, ruin your family's life, and we're not  
10 going to answer, but that's not the way it's set up.

11           It's set up to where we file a return, if there's a  
12 mistake, or if the person didn't do it right, we can file as  
13 many amended returns as we want. If we think we don't owe, we  
14 have a right to tell them that. We don't owe this. We have  
15 that right. And they've taken it all away from him. They've  
16 taken his rights away from him.

17           This trial, God willing, has to end in not guilty,  
18 then hopefully they'll give him his audit, and then they'll  
19 either agree with his audit, or they'll disagree, and if they  
20 disagree, and then he refuses to pay more than they've already  
21 asked for, maybe then there's some justification behind  
22 criminal charges.

23           This is an honest man, who grew up real fast. He had  
24 the ability to do something that nobody could figure out, and  
25 he had the stubbornness to keep working on it and failing and

1 failing and failing over and over again. He created an  
2 algorithm that could make everybody's life better if it gets to  
3 the American market, and it's all on the verge of destruction,  
4 the business, everything else.

5 And you're here and he's here, because on July 18th,  
6 2018, under oath, the IRS's position was has he ever made full  
7 payment of those taxes, meaning 2008 or 2009, and the answer --  
8 and the answer should be, yes, he's made 100 percent full  
9 payment more than he has, but the answer for 2008 is  
10 100 percent certain, no guessing. Yes, he'd paid. He's paid  
11 with his 10 years of toil over the one successful company that  
12 he had, and giving up control of, but he's still fighting to  
13 make this thing finish and work.

14 I thank you for your service here. God willing we  
15 get to keep doing this for the rest of my life, and we can't  
16 have a free country without jurors. Thomas Jefferson said that  
17 the jury system was intended to bind the Government up in  
18 chains to prevent them from doing the mischief that governments  
19 so often like to do, and I may have misstepped some of the  
20 words.

21 I thank you very much. There is no alternative but a  
22 not guilty on this, and they have to prove beyond all  
23 reasonable doubt that he knew somehow what the law was when he  
24 got messed up, that he's known all the way through here, and  
25 that he's trying to break the law, and there's no possibility

1 of that. The facts are just overwhelming. Thank you.

2 THE COURT: And thank you, sir.

3 Government, first witness, please.

4 MS. PARKER: Thank you, Your Honor. The Government  
5 calls Robert Miller.

6 (At 10:59 a.m., sworn by the Court.)

7 THE COURT: The witness stand in this courtroom is on  
8 your far left. If you could have a seat there, please, sir.  
9 The other thing I would note is that the chair does not move in  
10 the witness box, but the microphone does. We find that if it's  
11 about 10 inches away from where your mouth is, it works best  
12 for the jury's hearing and understanding of your testimony.

13 THE WITNESS: All right. Thank you.

14 MS. PARKER: Your Honor, could we have quick sidebar.

15 (Sidebar conference as follows:)

16 MS. PARKER: Your Honor, I don't know who the people  
17 are who are in the courtroom. Several people we've subpoenaed  
18 because they were associated with the defendant refused to meet  
19 with us, so --

20 MR. SASSE: I know the two that are on our side are  
21 relatives of my client, who have not received subpoena as to  
22 our knowledge.

23 MS. ARNETT: That's correct. That's correct. I  
24 don't know the left side.

25 MS. PARKER: The one --

1 MR. SASSE: I know one --

2 MS. PARKER: You know the other one, she's been on  
3 cases.

4 THE COURT: The one in the corner needs to go.

5 MR. SASSE: I would agree.

6 MS. PARKER: Too bad he doesn't have any good work to  
7 do.

8 THE COURT: So we have two --

9 MS. PARKER: Relatives.

10 THE COURT: Who have not been subpoenaed?

11 MS. PARKER: I don't know who they are. I have to --

12 MR. SASSE: Yeah, they are not on either list.

13 MR. MINNS: Non-testifying relatives.

14 THE COURT: All right. Good.

15 MS. PARKER: Thanks. That's what I needed.

16 MR. MINNS: Thanks.

17 (Sidebar conference concluded.)

18 THE COURT: Ms. Parker, your floor.

19 ROBERT MILLER,

20 GOVERNMENT'S WITNESS, SWORN AT 10:59 a.m.

21 DIRECT EXAMINATION

22 BY MS. PARKER:

23 Q. Would you state your name for us, please.

24 A. My name is Robert Miller.

25 Q. And just to make sure everybody understands correctly your

1 name, would you spell it for us.

2 A. R-O-B-E-R-T, M-I-L-L-E-R.

3 Q. And how are you employed, sir?

4 A. I am an employee of the Internal Revenue Service.

5 Q. And what are your current job duties?

6 A. My current occupation, my current job duties, are I work  
7 as a revenue agent and technical advisor. I work with agents,  
8 other agents, as well as doing examinations myself, so we take  
9 a tax return that somebody filed and verify that the  
10 information put in that tax return actually agreed with the  
11 information that they put on that return. So if they receive  
12 tax documents, we verify that those tax documents match up.

13 As technical advisor, I work with many people who  
14 have foreign bank accounts, as well as offshore transactions,  
15 and advise other agents on how to work those particular issues  
16 as well.

17 Q. When you say that you're a revenue agent, is that  
18 different from a special agent like Scott Hollabaugh?

19 A. It is. I simply work on the civil side of things, so the  
20 tax computations and verifying the information that's on the  
21 return is actually accurate.

22 Q. What sort of other duties have you held within the IRS?

23 A. As -- as of 2014 or '15, I can't remember the exact year,  
24 but an FBAR coordinator -- or earlier than that I think. I  
25 became an FBAR coordinator in 2011, whenever the position was

1 created for IRS employees. So as FBAR coordinator that's a  
2 report that's filed for foreign bank accounts. I work with  
3 agents that have either discovered that a taxpayer client has a  
4 foreign bank account, or they are looking at documents and they  
5 have this report that's on their tax return and they're trying  
6 to figure out how does that work with the information that's on  
7 that return. So I advise them, try to help them as they work  
8 through these foreign bank account issues.

9 Q. So that's another aspect of your work with offshore tax  
10 issues, would that be fair to say?

11 A. It is. Really it's a piece of that whole thing, so really  
12 I work with people who have offshore tax issues is really the  
13 predominant portion of my job now.

14 Q. And do you have responsibilities that are related to  
15 dealing with those offshore tax obligations?

16 A. Yes, I'm an offshore coordinator. I run various programs  
17 that -- or help run various programs that people have offshore  
18 assets, offshore accounts, offshore businesses that they need  
19 to report that they have not reported in the past.

20 Q. And what kind of training or educational background have  
21 you had that qualifies you for this type of work?

22 A. I went to the University of Michigan in Flint and received  
23 a bachelor's in business administration and got a degree in  
24 accounting. And right after that, that's when I came to work  
25 for the IRS after I graduated. So I've been a revenue agent

1 for approximately 13, 14 years; closer to 14, going on 14.

2           While I was at the IRS, I determined I wanted more  
3 tax knowledge, so I ended up going back to college and received  
4 a master's degree in taxations from Welch College in Troy, and  
5 then also received a CPA license, hold a CPA license now.

6 Q. And CPA stands for what?

7 A. Certified public accountant.

8 Q. And have you done any teaching or instructing in tax  
9 related fields?

10 A. Yes. I taught for three -- two and a half years as a  
11 community college teaching federal income tax. I've also  
12 taught numerous classes on international issues for the IRS  
13 internally, teaching new agents exactly what they need to look  
14 at from an international standpoint.

15 Q. And you -- when you refer to new agents, are you talking  
16 to revenue agents or special agents who are criminal  
17 investigators?

18 A. I'm speaking of revenue agents, and generally it's revenue  
19 agents who have some experience but this is a new area in which  
20 they're learning, so an offshore component. So it's  
21 experienced agents, revenue agents, who just don't have this  
22 offshore experience yet.

23           MS. PARKER: Your Honor, with the Court's permission,  
24 I would proceed to obtain some opinion or elicit some opinion  
25 testimony from this witness regarding his understanding of

1 offshore taxes and FBAR related matters.

2 THE COURT: Noting -- noting that you may have  
3 objections with respect to specific inquiries of the witness,  
4 any objection to the solicitation of opinion testimony?

5 MR. MINNS: Your Honor, we don't -- he is an expert,  
6 if that's -- if she's offering him as an expert, we don't know  
7 what the opinions are yet.

8 THE COURT: Certainly. You may proceed. In the  
9 event that there is an opinion that you believe escapes the  
10 foundational information concerning his expertise, we'll take  
11 up the question.

12 BY MS. PARKER:

13 Q. All right. Mr. Miller, are you -- as you've just  
14 explained, you are familiar with the requirements for US  
15 citizens and overseas tax obligations?

16 A. I am.

17 Q. All right. And what are the requirements as you  
18 understand them for US citizens living overseas to file US  
19 federal income tax returns?

20 A. The Internal Revenue Code says any US person must file a  
21 return if they meet certain conditions. Generally that  
22 condition is a low threshold dollar amount, typically the  
23 exemption amount. But if they meet that exemption amount, they  
24 must file a return, and that's regardless of whether they're  
25 living in the US or living in some foreign jurisdiction.

1 Q. All right. And does the requirement to file basically  
2 mean you have to file like the next year?

3 A. Similar to what an individual would file. There's a due  
4 date, and it's usually between four to six months after the end  
5 of the year so, for instance, if we came to the end of the year  
6 2019, that return would be due sometime four to six months  
7 after the end of that year, so it would be April of -- at the  
8 end of '19 it would be April of 2020 to July of 2020.

9 Q. All right. And you used the term before of FBAR. What is  
10 that?

11 A. It's a report. It's not filed with the tax return but  
12 it's a report that is separately filed. That report itself is  
13 a document that the taxpayer -- that the -- an individual who  
14 has a foreign bank account should fill out to report their  
15 foreign accounts. So it's really a listing of what foreign  
16 accounts a person may have.

17 Q. Does that apply to people who are living in the US?

18 A. It does. It applies to people that are living in the US  
19 but it also applies to people that are outside the US.

20 Q. All right. And when is that form required?

21 A. That form is required to be filed by June 30th of the  
22 following year, so similar to what our tax return is. It's due  
23 four months after the close of the year. This form would be  
24 due six months after the close of the year.

25 Q. And is there some sort of information that is required --

1 what -- let me put it this way: What kind of information do  
2 you need to put on an FBAR form?

3 A. Whenever you're filling out the form, there's a top  
4 section and that information identifies who specifically owns  
5 the bank account, or who specifically is a filer of the  
6 document I should say, so it identifies who's filing this  
7 document.

8 The second half of that information identifies the  
9 bank account that they have signature authority or control of  
10 or ownership, and it identifies the bank account and also the  
11 balance of what's in that bank account.

12 Q. Is there anything specific about the balance aspect of  
13 that disclosure statement?

14 A. There is. Because -- there's a threshold for it because  
15 the Government set a standard, a dollar amount, to verify that  
16 if you exceeded that dollar amount, you had to file an FBAR, so  
17 as long as your accounts were less than \$10,000, 10,000 or  
18 less, you did not have to file an FBAR. But if they were more  
19 than \$10,000, and that's whether it's one account or multiple.  
20 You add them altogether, and if at any point during that year  
21 it exceeded \$10,000, you would have to file an FBAR.

22 Q. So if you had \$10,000 in one account, you have to file an  
23 FBAR; if you have 10,000 -- or \$1,000 in 10 different accounts,  
24 you need to file an FBAR?

25 A. That's -- that's correct.

1 Q. And is there any kind of disclosure you need to make about  
2 what is in those accounts?

3 A. The -- there is a disclosure that you have to make.  
4 There's the disclosure for the FBAR. You have to disclose the  
5 dollar value that's in there, but there's also an indicator of  
6 what type of -- what type of account it is.

7 Q. Well, with regards to the dollar value, what type of  
8 information is required as to that?

9 A. Specifically we want -- the form requires you to put in US  
10 dollars the amount that is in that account. At one point  
11 historically they had ranges where they would ask you for a  
12 range, but then at some point they specifically -- I think it's  
13 2008 and forward, they specifically want to know the exact  
14 dollar amount which was your highest balance in your account.

15 Q. All right. So the highest balance or maybe the high water  
16 mark over the course of the year for which you're reporting?

17 A. Correct. For instance, if I held a bank account and  
18 during the year I only held \$1 in it, but as of January 15th, I  
19 put a million dollars in that bank account, and then I pulled  
20 that money out the same day, that bank account has reached a  
21 million dollars, more than 10,000. So even for just that  
22 little bit of time that that money was in there, I would have  
23 to file an FBAR to report that account.

24 Q. Historically have there been times when banks,  
25 particularly in Switzerland, wouldn't cooperate with the US

1 Government in order to obtain foreign bank account information?  
2 A. Yes, historically that's been an issue dating to before  
3 2015. 2015 there was a little bit of a change in the  
4 agreements, the cooperation between the US Government and the  
5 Swiss Government.

6 MS. PARKER: May I approach, Your Honor?

7 THE COURT: Yes.

8 BY MS. PARKER:

9 Q. I'm going to hand you some exhibits that are marked as  
10 Government's Exhibit 13, 14, 15, 17, and 19, and I'd ask you to  
11 take a look at those.

12 A. Do you want me to look at all of them now or just as we go  
13 through them?

14 Q. As a group, do you recognize what type of document they  
15 are?

16 A. Yes, I'm familiar with the documents.

17 Q. And what are they?

18 A. They are foreign bank account transcripts, so they're  
19 transcripts of the document that an individual would file with  
20 the Department of Treasury.

21 Q. Are they, in fact, transcripts of FBAR filings for a  
22 specific individual?

23 A. They are. They're for a specific individual.

24 Q. And who are they?

25 A. James Pieron, Jr.

1 MS. PARKER: And, Your Honor, I'll offer Government's  
2 Proposed Exhibits 13, 14, 15, 17 and 19.

3 MS. ARNETT: No objection.

4 THE COURT: Received.

5 BY MS. PARKER:

6 Q. All right. I'd like to ask you to take a look at that  
7 very first one, Exhibit 13. May we have that permission to  
8 display, Your Honor?

9 THE COURT: Yes.

10 MS. PARKER: Thank you.

11 THE COURT: And for those of you that are in the jury  
12 box, if you would be careful, I would appreciate it, but the  
13 screens can be lifted about 6 to 8 inches, and that will enable  
14 the folks that are in the second row to be able to see the  
15 exhibits a little bit better. And we'll make sure you're  
16 compensated for your work. Thank you.

17 BY MS. PARKER:

18 Q. All right. Can you, first of all, just explain to us  
19 briefly what a transcript.

20 A. Sure. When somebody files a document with the Government,  
21 there's an original copy of it, and then there's a transcript  
22 that's made. A transcript really is computer generated  
23 information that's on there. So really it takes the  
24 information that the person input on a form and puts it into a  
25 formatted computerized version of this, which is what this

1 transcript is.

2 Q. And you said previously this transcript is for James  
3 Pieron?

4 A. That's correct.

5 Q. And for what years?

6 A. Specifically the one I'm looking at right this second, it  
7 is for year -- tax year -- or calendar year 2005.

8 Q. All right. And for -- what banks are being reported,  
9 there? What accounts?

10 A. There are two different banks, and you can see that down  
11 at the bottom half of that. It lists account one of two and  
12 two of two. The first account one is at the Union Bank of  
13 Switzerland, and the second one is also at the Union Bank of  
14 Switzerland.

15 Q. Does the Union Bank of Switzerland kind of often go by an  
16 acronym?

17 A. It does. It does. It's well known as UBS.

18 Q. And what is reported as the high dollar or maximum dollar  
19 amount for those two accounts for 2005?

20 A. For -- on the transcript for this first UBS, Union Bank of  
21 Switzerland, account, the maximum account value is listed as  
22 \$100,000. And on the second one there is -- it just says to be  
23 determined.

24 Q. And when was that form for 2005 bank accounts filed?

25 A. It was filed August 6th, 2012. That's the first

1 information on there.

2 Q. All right. Let's go on to Exhibit 14, please. Another  
3 FBAR transcript you've already said?

4 A. Correct.

5 Q. What year is that one for?

6 A. This one is for 2006.

7 Q. And still for James Pieron, Jr.?

8 A. It is.

9 Q. And what kind of account is -- or accounts are being  
10 reported on that form?

11 A. In this one there are three accounts that are listed here.  
12 You can see on page 2 at the top there's a Credit Suisse  
13 account. On -- also on page 2 is a UBS account, Union Bank of  
14 Switzerland. And on page 3, it's a Union Bank of Switzerland  
15 account.

16 Q. Let's go on to -- again, sorry, when was that one filed?

17 A. That one was filed late on August 6th, 2012.

18 Q. Let's go on to Exhibit 15, please. That's another FBAR  
19 transcript for Mr. Pieron?

20 A. It is.

21 Q. Pieron I should say, I'm sorry. And what bank accounts  
22 are reported there?

23 A. There are eight total that are individually owned.  
24 They're listed as financial accounts. They are Union Bank of  
25 Switzerland, JDFX Fund Limited, Union Bank of Switzerland. On

1 page 4 is another Union Bank of Switzerland. Page 5 is a  
2 Credit Suisse account. Page 6 is a Saxo bank account, and page  
3 7 is another Union Bank of Switzerland account. And then page  
4 8 is a Union Bank of Switzerland account. So eight total  
5 accounts that are personally owned, but this FBAR transcript is  
6 a little different. This also has two accounts in which he has  
7 signature authority as well.

8 Q. All right. And where -- what page of the form is that on?

9 A. That is on page 8, and that starts at the bottom half of  
10 page 8. It says, information on financial accounts where filer  
11 has signature authority but no financial interest in the  
12 account.

13 Q. All right. So you have eight individual accounts and then  
14 two business accounts?

15 A. Correct.

16 Q. And what are those two business accounts?

17 A. Are -- could you -- ask that again.

18 Q. What's the institution where those two business accounts  
19 are located?

20 A. The -- both of those accounts are held at JPMorgan.

21 Q. And what's the name on those accounts?

22 A. The name of the -- the last -- on the bottom half of -- or  
23 top half of page 9, it lists the owner last name or  
24 organization name of the account, and that is JDFX Fund  
25 Limited. And on account two, there's the exact same thing;

1 owner, last name or organization name, essentially the owner of  
2 the bank account, JDFX Fund Limited, so both of those are owned  
3 by JDFX Fund Limited.

4 Q. What's the significance to the information that Mr. Pieron  
5 has signature authority but claims no personal interest in the  
6 assets in those two accounts?

7 A. Typically what it means is they have a -- most often what  
8 we see is somebody has a business interest in that account,  
9 meaning they have some sort of authoritarian role, director,  
10 CEO or operator of an account, but that money is owned by that  
11 corporate entity, but they have the ability to sign checks and  
12 be able to spend the money as they need to.

13 Q. All right. And is there a title given to the person,  
14 Mr. Pieron, as he files this form?

15 A. There is. So on this form there is a section for the  
16 filer. It lists who the filer is, and that's James Pieron.  
17 But at the bottom of that it says who -- what is the filer's  
18 title with this owner. So more -- essentially asking what is  
19 the filer's relationship to this business entity, and it says  
20 director for both bank accounts, both corporate bank accounts.

21 Q. And what are the balances that are reported for, first of  
22 all, the eight personal accounts, please?

23 A. In the first account at UBS, United Bank of Switzerland,  
24 there's \$50,000 in that account.

25 On page 2 at the bottom half of that document there

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1 is a -- an account at JDFX Fund Limited, and that account has  
2 \$8,850,000 in it.

3 On page 3 there's a bank account at Union Bank of  
4 Switzerland, and it shows that there's \$8 million in that  
5 account.

6 On page 4 there's an account at Union Bank of  
7 Switzerland as well. That one the maximum value is 100,000.

8 On page 5, Credit Suisse, there is a maximum value of  
9 9,250,000 in that account.

10 In -- on page 6 there is an account at Saxo Bank, and  
11 that account has 2. -- 2,600,000 in that account.

12 On page 7, Union Bank of Switzerland, there is  
13 200,000 in that account.

14 And on page 8, Union Bank of Switzerland, the report  
15 shows that the maximum value was 100,000 in that account. And  
16 those are the personal accounts. The business accounts also  
17 had a maximum value as well.

18 Q. And what are those?

19 A. The first account at JPMorgan on page 8 shows a high  
20 balance, maximum balance, of 7,500,000.

21 The second account at JPMorgan shows a -- which is on  
22 page 9, shows a balance of 19,900,000.

23 Q. All right. Going on then to Exhibit 17, can you locate  
24 that one?

25 A. Yes, I have it here.

1 Q. That should be the FBAR transcript for 2008?

2 A. It is, correct.

3 Q. Does that appear to list the same personal accounts as the  
4 previous one?

5 A. Yes, it does.

6 Q. All right. And what are the account balances in those  
7 eight accounts -- the high balance reported for 2008?

8 A. On page 2 it shows Union Bank of Switzerland had as a  
9 maximum balance 4,250,000.

10 On -- also on page 2, JDFX Fund had 2,600,000.

11 On page 3, Union Bank of Switzerland had 300,000.

12 Page 4, Union Bank of Switzerland had a million --  
13 \$1 million listed as the high balance.

14 Page 5, Credit Suisse listed 9,250,000 as the high  
15 balance.

16 Page 6, Union Bank of Switzerland had 170,000 listed  
17 as the high balance.

18 Page 7, Saxo Bank had 2,614,000 listed as a high  
19 balance.

20 And on page 8, Union Bank of Switzerland had  
21 2,250,000 listed as a high balance, and those are the personal  
22 accounts.

23 Q. All right. And what was listed in terms of corporate or  
24 business accounts on that 2008 FBAR?

25 A. There are -- there are three corporate bank accounts

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1 listed this time, and there are -- on page 8 there's -- the  
2 first one is Deutsche Bank and that is a high balance of  
3 10 million.

4 The second one on page 9 is JPMorgan, and the high  
5 balance is 5,500,000.

6 And the third bank is JPMorgan with a high balance of  
7 660,000.

8 Q. And what's the title of the filer for that 2008 FBAR?

9 A. The filer James Pieron.

10 Q. And the title?

11 A. The title of the person filing it is director.

12 Q. Okay. Then go on to Exhibit 19, please. That would be a  
13 2009 FBAR report, I believe?

14 A. It is.

15 Q. Again, what personal accounts are reported there?

16 A. It looks like the same -- let me make sure, but it looks  
17 to be the same accounts that were listed previously, and they  
18 are. And there is one additional account here, so do you want  
19 me to go through what accounts are listed?

20 Q. Yeah. Why don't you at the same time give what account is  
21 listed and what the dollar -- high dollar report is.

22 A. Okay. On page 2 of this document it shows at the top  
23 half, Union Bank of Switzerland and it shows a high balance of  
24 a million dollars.

25 The second half of that page it shows Union Bank of

1 Switzerland and it shows 2,250,000.

2 On page 3 there is Saxo Bank, and that shows a  
3 balance of 2,100,000.

4 On page 4 is Union Bank of Switzerland and that shows  
5 a high balance of 300,000.

6 On page 5 it's Union Bank of Switzerland again, and  
7 that shows a balance of 3,800,000.

8 On page 6 is Credit Suisse and that shows a balance  
9 250,000.

10 Page 7 shows Banque Cantonale Vaudoise with a high  
11 balance of 23,000.

12 Q. Let me just stop you there, because I know we're going to  
13 need to get a spelling. Can you spell that bank.

14 A. Yes. The bank name is B-A-N-Q-U-E, Cantonale is  
15 C-A-N-T-O-N-A-L-E, and Vaudoise, V-A-U-D-O-I-S-E.

16 Q. Couldn't have done that without you. Thank you.

17 A. Yep.

18 Q. And I don't know, did you state the value of that one,  
19 please.

20 A. Yes. The value in that account was 23,000 according to  
21 the report here.

22 Q. And --

23 A. Then there was one final personal account, and that was  
24 Union Bank of Switzerland, and that had \$100,000 in it.

25 Q. And what was reported for business accounts on this 2009

1 FBAR?

2 A. Once again, there were three business accounts; one at  
3 JPMorgan that had 7,250,000 in it; one at Deutsche Bank which  
4 had \$1 million in it; and one at JPMorgan again with 660,000 in  
5 it.

6 Q. All right. And, again, who was the filer?

7 A. The filer of this is listed as director.

8 Q. Okay. And for the Exhibits 15, 17 and 19, when were each  
9 of those FBARs filed. Fifteen is for 2007, correct?

10 A. Exhibit 15 is that what you're asking?

11 Q. Yes.

12 A. Yes.

13 Q. And when was that filed?

14 A. August 6th, 2012. It's at the top of that form.

15 Q. All right. Exhibit 17 for 2008.

16 A. Once again, at the top of that form it was August 6th,  
17 2012.

18 Q. And Exhibit 19 for 2009?

19 A. Once again, it shows a filing date on that form at the top  
20 of August 6th, 2012.

21 Q. I'm going to hand you two more sets of exhibits. One will  
22 be Exhibit 129 and the other Exhibit 120A through H.

23 MS. PARKER: Your Honor, I'd offer those pursuant to  
24 the certificates of authenticity. They are bank records.

25 MS. ARNETT: No objection.

1                   THE COURT: They're received into evidence.

2 BY MS. PARKER:

3 Q. Can you take a look at Exhibit 129 for us, please.

4 A. Yes.

5 Q. Is that a folder with several wire transfer records?

6 A. Yes.

7 Q. And do those wire transfers involve JDX Fund transfers?

8 Let me ask you to refer specifically to what will be Bates  
9 numbered as 10773.

10 A. Yes, it reflects transaction with JDFX Fund.

11 Q. 10773?

12 A. It does and where I'm seeing that is in that bottom  
13 left-hand section, that, for lack of a better term, paragraph  
14 where it starts at "send." At the very bottom of that it  
15 lists, O-R-I-G, which is short for originator, and that's JDFX  
16 Fund Management Limited there.

17 Q. All right. And can you see the date of that wire  
18 transfer?

19 A. I do. It's directly at the top there. And that transfer  
20 reference number, that's November 18th, 2009. It's written  
21 different than how you would typically read a date, but it's  
22 November 18th, 2009.

23 Q. Are you familiar with that sort of convention in date  
24 usage?

25 A. Yes. We see it in the banking industry often with foreign

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1 accounts. They date them differently than we do in the US.

2 Q. All right. They sometimes list year and then month and  
3 then day?

4 A. Correct.

5 Q. And so -- I'm sorry, what was the date of this wire  
6 transfer?

7 A. November 18th, 2009.

8 Q. All right. And do you see the account number for that  
9 account?

10 A. There -- there are two account numbers. There's one where  
11 the money's coming out of the bank account and one to where the  
12 account is going to. I see both of those account numbers.

13 Q. All right. For the account that is sending the wire  
14 transfer, do you see the account number for that?

15 A. I do. It's sender reference number, and then it has an  
16 account number there. So it's about in the middle of that  
17 bottom left side paragraph.

18 Q. And how much is the wire transfer?

19 A. The wire transfer is for \$749,975.

20 Q. And you said that was a transfer in 2009?

21 A. It was.

22 Q. Looking back at Exhibit 19, which is the FBAR from 2009.

23 A. I have it.

24 Q. Do you see that account number on that FBAR?

25 A. I see one that is substantially similar to it, yes, on

1 page 6 of that FBAR transcript.

2 Q. All right. But is it the same?

3 A. It is the same eight numbers, and then at the end there's  
4 a 1-1. It appears that possibly it may be a misprint on that  
5 because the bank matches, Credit Suisse is the bank, and that's  
6 the bank listed on both the wire document and also on the

7 FBAR --

8 Q. Right.

9 A. -- and the account -- the first eight numbers of the  
10 account number match, so I would presume that these are one in  
11 the same accounts.

12 Q. Okay. And what, again, was the amount that was reported  
13 on the FBAR was the maximum dollar amount in that account in  
14 2009?

15 A. For 2009, this report reflects the highest balance in this  
16 account during 2009 is \$250,000.

17 Q. But the wire transfer is coming out of that account,  
18 correct?

19 A. It is, correct.

20 Q. In 2009?

21 A. Correct, in 2009.

22 Q. And what's the amount of the wire transfer again?

23 A. It is \$749,975.

24 Q. Does that give you reason to question the accuracy of that  
25 FBAR?

1 A. Yeah, the number on the FBAR would be false if there was  
2 that much money to be able to pull out of -- be able to wire to  
3 a different bank account.

4 Q. And what is the effect on the IRS if there's not accurate  
5 reporting on that FBAR?

6 A. It really limits the ability for the IRS to be able to  
7 know the assets and really the ability to try to collect  
8 information or collect assets, money from that individual.

9 Q. Is that one of the uses of the FBAR information, to try to  
10 identify the location of assets so if collection activities are  
11 necessary they can be pursued against those personal accounts?

12 A. It is. It's one of the elements of it. It's the  
13 reporting requirements so, one, we can know what assets there  
14 are so the income can be reported correctly; but, two, whenever  
15 there are assets out there it's so that the IRS has an ability  
16 to be able to notify -- have notice of those assets in  
17 collectibility type issues.

18 Q. I also offer -- or gave you previously a collection of  
19 exhibits 120A through H. Can you locate Exhibit 120C, please.

20 A. I have 120C.

21 Q. All right. What -- that's a bank statement?

22 A. It is, a Nationality City, a US bank statement.

23 Q. All right. And it's for what time period --

24 A. It is for --

25 Q. -- looking at the first page.

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1 A. It is for the period October 31st, 2009 to November 30th,  
2 2009.

3 Q. And on that bank statement, do you see a transaction that  
4 corresponds with the wire transfer that you were testifying  
5 about recently?

6 A. I do. I see the very same dollar amount, \$749,975, that  
7 is wire transferred into this bank account, so this is a  
8 receiving bank.

9 Q. But, again, that money coming from that foreign account  
10 into the thing was not reported on the 2009 FBAR?

11 A. It was not reported on the FBAR.

12 Q. I'll show you Government's Proposed Exhibit 89. Does that  
13 appear to be a copy of an FBAR?

14 A. It does. We had talked earlier about a transcript and the  
15 original document. This appears to be a copy of an FBAR  
16 document.

17 MS. PARKER: Your Honor, I'd offer Government's  
18 Proposed Exhibit 89.

19 MS. ARNETT: I have an objection. The filing that  
20 AHP provided, which is what he's looking at, included an  
21 additional statement attached to the FBAR, and the Government's  
22 exhibits don't include that statement.

23 MS. PARKER: I think if they can provide a foundation  
24 for the admission of that, that's fine, they can offer it in  
25 their case. We've offered --

1 MS. ARNETT: It gets filed with the FBAR.

2 MS. PARKER: I don't think that alters its -- the  
3 hurdles that arise under 801.

4 THE COURT: Do you have a proffer on the  
5 supplementary information that you suggest was filed with the  
6 FBAR return?

7 MS. ARNETT: Yes.

8 THE COURT: Would you like to examine the witness  
9 concerning the supplemental information?

10 MS. ARNETT: Yes.

11 THE COURT: Your floor. If you'd like to -- my  
12 assumption is that that particular portion of the exhibit is  
13 not in front of the witness? Am I --

14 MS. ARNETT: That's correct, Your Honor.

15 THE COURT: If you'd like to make sure that he's  
16 furnished a copy of that, please.

17 MS. ARNETT: May I approach?

18 THE COURT: Yes.

19 MS. ARNETT: I'm sorry, which year FBAR do you have?

20 THE WITNESS: This is the 2009.

21 MS. ARNETT: Okay. I have to get 2009. 2009, right?

22 THE WITNESS: Yes.

23 MS. ARNETT: May I proceed?

24 THE COURT: You may.

25 MS. ARNETT: You're a CPA correct, sir?

1                   THE WITNESS:  Correct.

2                   MS. ARNETT:  And have you filed FBARS for other  
3 individuals?

4                   THE WITNESS:  I have not.

5                   MS. ARNETT:  Have you filed any returns for other  
6 individuals?

7                   THE WITNESS:  Family members through Turbo Tax or  
8 something like that, yes, but not FBAR forms.

9                   MS. ARNETT:  And in those filings that you even do on  
10 tax returns, sometimes you attach additional statements,  
11 correct, explaining a position one way or the other in the tax  
12 return, right?

13                  THE WITNESS:  You sometimes -- some of the software  
14 allows you to, yes.

15                  MS. ARNETT:  And as a technical advisor and an  
16 instructor with the IRS, you're aware that FBAR filings  
17 sometimes have additional statements giving explanations about  
18 the FBARs, correct?

19                  THE WITNESS:  I have seen some additional statements,  
20 yes.

21                  MS. ARNETT:  If you could turn to page 5 of Defense  
22 Exhibit 1013, which you should have in your hands.

23                  THE WITNESS:  Yes, I do.

24                  MS. ARNETT:  Does this appear to be the type of  
25 statement that would be included with an FBAR filed by a CPA?

1                   THE WITNESS: One second, let me read it just to make  
2 sure.

3                   MS. ARNETT: Yes, sir.

4                   THE WITNESS: Okay. Now will you repeat the  
5 question, please.

6                   MS. ARNETT: Yes, sir. Does this appear to be  
7 similar to an explanation statement or a statement providing  
8 additional information that would be attached to an FBAR?

9                   THE WITNESS: It certainly looks like it could be  
10 something that somebody would attach to an FBAR.

11                  MS. ARNETT: And are you the IRS representative that  
12 pulled the records for the Government in this case?

13                  THE WITNESS: No, I did not.

14                  MS. ARNETT: Do you have any idea why this wasn't  
15 included with the records that were pulled?

16                  MS. PARKER: Objection, Your Honor, relevance.

17                  THE COURT: What we're attempting to do at this point  
18 is to authenticate presumably the supplementary information  
19 that you're furnishing here. I assume that you don't have a  
20 similar certificate of authenticity which would be the  
21 predicate for authentication here; is that correct?

22                  MS. ARNETT: Yes, Your Honor. I have -- the  
23 Government -- we rely on the Government in tax cases to pull  
24 the IRS records, and these came from the Government in the  
25 production, so it was included in the production with the FBAR

1 filings, and as Mr. Miller testified, they're normally  
2 statements filed, it's a normal course of business to file  
3 explanatory statements with FBARs and tax returns.

4 THE COURT: I appreciate your point --

5 MS. PARKER: Your Honor --

6 THE COURT: -- but I think you've gone about as far  
7 as you can go with this witness at this stage.

8 MS. ARNETT: Yes, sir.

9 THE COURT: It's going to require foundational  
10 information probably from another witness.

11 MS. ARNETT: Thank you, Your Honor.

12 THE COURT: You may continue.

13 MS. PARKER: All right.

14 May Exhibit 89 be received, Your Honor?

15 THE COURT: Eighty-nine will be received, subject to  
16 the objection of the defense.

17 MS. ARNETT: Thank you.

18 MS. PARKER: And again our objection is 801.

19 THE COURT: Noted.

20 BY MS. PARKER:

21 Q. All right. Can you take a look at Exhibit 89?

22 A. Yes.

23 Q. That is the FBAR for Mr. Pieron for 2009?

24 A. Yes, it appears to be.

25 Q. And anywhere listed -- oh, when was that one filed?

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1 A. I do not see a -- oh, I'm sorry, there is a filing date on  
2 here. May 17th, 2012.

3 Q. And do you see the high watermark of \$749,975 reported on  
4 the actual form that was submitted?

5 A. No, I do not. On page -- third page of this document, it  
6 shows a high balance of \$250,000.

7 Q. Next I'd like to show you Government's Proposed  
8 Exhibit 21. Is that another FBAR for Mr. Pieron for 2010?

9 A. Yes, it's an FBAR transcript, so we're back to the  
10 transcript now.

11 Q. I'm sorry, transcript, yes. Thank you for that. And how  
12 many personal accounts are listed there?

13 A. There are six personal accounts listed on here.

14 Q. And what are the balances in those accounts?

15 A. On page --

16 MS. PARKER: I'm sorry, Your Honor. I forgot to  
17 offer it, I believe. I should do that before I ask that  
18 question.

19 MS. ARNETT: No objection to the transcript.

20 THE COURT: Received.

21 BY MS. PARKER:

22 Q. Thank you. Now, please, answer the question.

23 A. On page 1 it lists that filer information, that's James  
24 Pieron, but on the bottom -- or on page 2, it lists the  
25 account, first account, at Credit Suisse with an account

1 balance of 350,000 a high balance.

2                   Also page 2 it lists Union Bank of Switzerland with a  
3 high balance of 300,000, and page 3 it's Banque Cantonale  
4 Vaudoise with a high balance of 840,000.

5                   Page 4, Saxo Bank with a high balance of 2,100,000.

6                   Union Bank of Switzerland on page 5 with a balance of  
7 200,000.

8                   And on page 6, Union Bank of Switzerland, with a high  
9 balance of 10,000.

10 Q. All right. And are there business accounts on that  
11 disclosure form, FBAR?

12 A. I'm sorry, I did not hear the question.

13 Q. I'm sorry. I was -- are there business accounts on there  
14 also?

15 A. Yes, there are. There's two business accounts listed.

16 Q. And what are they, and what are their account balances  
17 that are reported?

18 A. One account is at JPMorgan and has a balance of 160,000,  
19 and one --

20 Q. And for what entity, I'm sorry?

21 A. That is for JDFX Fund Limited, and the second account,  
22 which is also for JDFX Fund Limited, that has a bank balance on  
23 page 7 of 660,000.

24 Q. And, again, when was that 2010 FBAR filing done?

25 A. This filing was done on August 6th, 2012.

1 Q. All right. Are you familiar with a form 5471?

2 A. Yes.

3 Q. What kind of -- that's an IRS form I should say?

4 A. It is an IRS form.

5 Q. And what is that used for, that form?

6 A. That -- if an individual owns and controls a foreign  
7 corporation, a corporation that's created in a foreign  
8 jurisdiction, the Form 5471 has to be filed with either  
9 their -- whoever that owner is. So if it's an individual that  
10 owns that foreign corporation, attached to their 1040 they  
11 would file this form, and it would tell the Government about  
12 that corporation, including the income that it earned as well  
13 as the assets that it possesses.

14 Q. So when is a person required to file a 5471?

15 A. There's -- there's multiple categories of filers. One of  
16 the more common ones we see is whenever they have control,  
17 meaning more than 50 percent control of that corporation, by  
18 voting power or by stock ownership, if they have that, they  
19 have to file the 5471 with their return.

20 Q. And, again, that's information that goes to the IRS?

21 A. It is. Unlike the FBAR, the FBAR is filed separately from  
22 the tax return; 5471's are directly attached to the 1040 tax  
23 return.

24 Q. And the 1040 is your individual tax return?

25 A. Correct. It's the one you would normally file for an

1 individual.

2 Q. How does the Form 5471 relate to an individual's 1040,  
3 their personal tax return?

4 A. So, much like domestic corporations, foreign corporations,  
5 if they're doing business, that business is earned by that  
6 corporation and it doesn't impact the individual's return. But  
7 if an individual receives dividends or distributions, takes  
8 money out of that foreign corporation, they have to report it,  
9 and it gets reported as dividends and should be on a tax return  
10 as a dividend.

11 So the 5471 lists that information, the income  
12 earned, as well as money that was distributed, and then the  
13 1040 reflects that distributed money that was distributed to  
14 the owner.

15 Q. If the person who has that ownership in the foreign  
16 business takes money out of that business for his or her  
17 personal use, would there be a tax implication for that?

18 A. There would. If somebody pulls money out of a foreign  
19 corporation, they should report that, either as a dividend or  
20 return of capital, or as a capital gain. There should be some  
21 taxable event. There should be some recognition of that.

22 Q. I'm going to show you Government's Proposed Exhibits 39,  
23 40, 41, 42, and 48. Can you look at those, sir, and tell me if  
24 those are all certified copies of 1040 or 1040X, that is  
25 personal tax returns for James Pieron?

1 A. Yes, they are.

2 Q. And are they all -- a 1040X is what kind of form?

3 A. A 1040X is called an amended return. It's whenever you  
4 have changes that you need to make to your original return.  
5 Somebody would file that to make those changes.

6 MS. PARKER: Your Honor, I offer Government's  
7 Proposed Exhibits 39, 40, 41, 42, and 48.

8 MS. ARNETT: May we approach at sidebar, please?

9 THE COURT: Yes. And actually, while we're doing  
10 that, I'd like to see if we can get about a five minute recess  
11 in for the jury, so that they're able to stretch. Maybe this  
12 would be a good time for us to do that. Any objection to --

13 MS. PARKER: Of course not, Your Honor.

14 THE COURT: Mr. Haines should be on his way.

15 (At 11:53 a.m., jury leaves.)

16 THE COURT: Record will reflect the fact that we're  
17 outside of the presence of the jury. You maybe seated.

18 You had an issue you wished to raise, ma'am?

19 MS. ARNETT: Yes, Your Honor. We were provided  
20 discovery, but I haven't actually seen the certified records  
21 from the IRS so, I mean, I don't know if I'll have a problem  
22 with them, but I would like to have the opportunity to compare  
23 them to what has -- was on the exhibit list marked because I  
24 don't know -- you know, sometimes you get certified records  
25 from the IRS, and there's some additional pages. I would just

1 like an opportunity to inspect them.

2 MS. PARKER: No -- I can show them to her if you  
3 want.

4 THE COURT: Sure.

5 MS. ARNETT: Thank you.

6 THE COURT: In fact, you'll have a good five minutes  
7 here.

8 MS. ARNETT: Perfect. May I approach the witness and  
9 retrieve them?

10 THE COURT: You may.

11 MS. PARKER: And for now, Judge, I'll just offer 39,  
12 40 and 42.

13 MS. ARNETT: Should I go ahead and take a look at 41  
14 and 48 if you're going to.

15 MS. PARKER: It's up to you, but I would prioritize  
16 things.

17 MS. ARNETT: Okay. Gotcha.

18 THE COURT: Record's closed.

19 (At 11:56 a.m., court recessed.)

20 THE COURT: Can we have the jury, please.

21 (At 12:09 p.m., jury arrives.)

22 THE COURT: Please be seated. Ms. Parker, if you'd  
23 like to continue.

24 BY MS. PARKER:

25 Q. All right. One quick thing I need to circle back on if I

1 could. Could you pull up Exhibit 19, please.

2 Again, Exhibit 19 is the FBAR transcript for 2009?

3 A. That's correct.

4 Q. And you were asked some questions a little while ago by  
5 one of Mr. Pieron's defense attorneys about a statement. Is --  
6 is there typically on a transcript form any sort of notation  
7 regarding statements if they are submitted with returns?

8 A. Yes. In that filing information section right at the top,  
9 if somebody submits written information, which is not that  
10 uncommon, especially if they're late-filed FBARs, there will be  
11 an information section in there that will transcribe exactly  
12 what was submitted with the delinquent FBARs, so that the  
13 Government would be able to read whatever information is  
14 supposed to be transcribed there.

15 Q. All right. And with regards to that 2009 FBAR in  
16 Exhibit 89 -- or excuse me, in Exhibit 19, is there a notation  
17 of an attached statement?

18 A. There's no notation of that.

19 Q. What about the other FBAR transcripts that you've  
20 testified about today?

21 A. I did not see any notations, any notes, that were added  
22 with any of the FBAR transcripts that I've seen so far.

23 Q. Okay. Thank you for clarifying that for us.

24 I'd ask you now to direct your attention to  
25 Government's Proposed Exhibits 39, 40 and 42. Are those tax

1 returns?

2 A. They are.

3 Q. In fact, you have certified copies of them?

4 A. Correct.

5 Q. Are they for Mr. Pieron?

6 A. They are.

7 Q. And what year is 39 for?

8 A. It is for the tax year 2007.

9 Q. Do you see a Form 54 -- excuse me, I will offer that,  
10 first. I'll offer Exhibit 39.

11 THE COURT: Is it the 5471?

12 MS. PARKER: No, it's the 1040.

13 MS. ARNETT: No objection, Your Honor.

14 THE COURT: Received.

15 BY MS. PARKER:

16 Q. Exhibit 40, is that a 1040 for what year?

17 A. You -- Exhibit 40 is what you're asking?

18 Q. Yeah, I'm just trying to get them all admitted first.

19 A. Okay. That is an original return for 2008.

20 Q. Okay. And 42?

21 A. That is an original return for 2009.

22 MS. PARKER: Your Honor, I'll also offer Exhibits 40  
23 and 42.

24 MS. ARNETT: No objection, Your Honor.

25 THE COURT: Received.

1 BY MS. PARKER:

2 Q. Okay. With regards to -- now circle back to Exhibit 39,  
3 which was a 1040 for Mr. Pieron for 2007?

4 A. Correct.

5 Q. Is there a 5471 accompanying or a part of that 1040  
6 return?

7 A. No, there is not.

8 Q. All right. Let's just say for the sake of discussion, if  
9 there had been a 5471 reflecting that someone had taken money  
10 out of a foreign corporation, where, again, would that go on  
11 the 1040 form?

12 A. It's -- it's -- the form itself would be attached just as  
13 an attachment, but the income, if he withdrew money from that  
14 account, would go on line 9A of that front page. So the  
15 section we have up now, in the income section, that middle  
16 section, assuming he had the ability to withdraw the -- had  
17 earnings and profits, it would go on qualified dividends line,  
18 line 9B is the qualified dividend line.

19 Q. All right. And are there any -- is there anything  
20 reported there?

21 A. There is not.

22 Q. For 2007?

23 A. Correct, there is not.

24 Q. All right. Let's look at the next tax return, Exhibit 40  
25 for 2008. Is there a 5471 form included in that tax return?

1 A. There is not.

2 Q. And is there dividend income reported on the first page of  
3 the 1040?

4 A. There is not.

5 Q. How about Exhibit 42, the 2009 1040?

6 A. There's not a 5471 attached.

7 Q. Is there dividend income reported on the first page?

8 A. There is not.

9 Q. Okay. Are you familiar with a W8 form?

10 A. Yes, I am.

11 Q. Are you familiar with a W8BEN form?

12 A. I am.

13 Q. I would like to approach with Government's Proposed  
14 Exhibit 115, which would be Peregrine Financial Group records  
15 provided under certificate of authenticity. I propose to offer  
16 Exhibit 115.

17 MS. ARNETT: Oh, I have an objection. I'm sorry, I  
18 thought we were reviewing it. I do have an objection to  
19 this -- to any exhibits coming in from Peregrine Financial. We  
20 were provided Bates documents with missing Bates ranges, so I  
21 don't know if we have been given the complete Peregrine  
22 Financial file. I don't even know what is with Peregrine  
23 Financial, so the Bates ranges are all over the place, but  
24 there are huge gaps in these numbers.

25 THE COURT: Who is the signatory to the return?

1 MS. ARNETT: I'm sorry, what she's offering is bank  
2 records from a Peregrine Financial.

3 THE COURT: Okay.

4 MS. PARKER: Judge, there's a W-8BEN form that is  
5 part of this. There is also an online banking application.  
6 These were records that were provided, and we told them which  
7 specific -- we provided more than we selected for use as  
8 exhibits based on what was relevant. I don't think that limits  
9 the admissibility.

10 THE COURT: At this juncture, neither the jury nor I  
11 know what the entity is that has just been referred to.

12 MS. PARKER: It's a -- sorry. From what I  
13 understand, it was an entity that did forex trading, currency  
14 trading.

15 THE COURT: We're going to need a foundation.

16 MS. PARKER: Pardon?

17 THE COURT: We're going to need a foundation from a  
18 relevancy perspective at this stage.

19 MS. PARKER: Well, I think -- I'd be happy to do  
20 that.

21 BY MS. PARKER:

22 Q. Can you refer to the W-8BEN form in there?

23 A. Yes, I can.

24 MR. SASSE: What's the exhibit number?

25 MS. PARKER: It's part of 115.

1 BY MS. PARKER:

2 Q. Is that a form that was completed by the defendant?

3 A. It is. It lists him as the beneficial owner on this  
4 document, yes.

5 MS. ARNETT: Objection. I don't know how he has  
6 knowledge if he completed the form or not.

7 MS. PARKER: I think he gave an answer that was  
8 better than my question.

9 MS. ARNETT: Okay.

10 MS. PARKER: That was appropriate.

11 THE COURT: His response was reflective of his  
12 observation of the document in front of him.

13 MS. ARNETT: Thank you.

14 BY MS. PARKER:

15 Q. And does it -- is that the form that you're familiar with?

16 A. Yes, it is a form I'm familiar with.

17 Q. And is it a type of IRS form?

18 A. It is.

19 Q. What context is that form used?

20 A. It is used for non-US persons who have US-sourced income.  
21 So somebody who doesn't live in the US and has no connection to  
22 the US, but has earned income from someplace in the US.

23 Q. And the date of that form?

24 A. It is July of 2009. I can't read the middle dates, the  
25 days.

1 Q. All right. That's good enough for our purposes at the  
2 moment. And whose name is on the form or what name is on the  
3 form?

4 A. James Pieron.

5 Q. And when that form is completed, how is that used by the  
6 entity that obtains that form?

7 A. The entity that obtains this form, so the banking  
8 institution that receives it, they need to know whether or not  
9 this individual is a US person or a foreign person, so the  
10 W-8BEN is filled out by non-US people to inform the bank that  
11 they potentially may need to be withheld against, but typically  
12 at a treaty or reduced rate.

13 Q. Is -- does that form have implications in -- is there  
14 an -- let me ask you this way: Is there a different form that  
15 is used for US citizens?

16 A. Yes, there is.

17 Q. And what would that form be?

18 A. That is a W-9.

19 Q. All right. So in the same context, a US citizen would  
20 file a W-9, a non-US citizen files a W-8?

21 A. W-8BEN, correct.

22 Q. And in this context, it's the W-8BEN form is being used by  
23 Mr. Pieron?

24 A. That is correct.

25 MS. PARKER: Your Honor, I think that satisfies the

1 relevance in terms -- if I understand the Court's concern.

2 MS. ARNETT: Your Honor, I don't see how there's any  
3 foundation laid. This gentleman works for the IRS. This is  
4 not a document that's filed with the IRS. It's used by the  
5 banks, and I object to him offering any sort of foundation for  
6 this document. They have two people from Peregrine on their  
7 witness list, and if they want to offer a foundation with them,  
8 then that is a different story.

9 MS. PARKER: I think he can still testify based on  
10 his qualifications regarding the use of this form and how that  
11 would affect --

12 THE COURT: And I agree with you, he can offer expert  
13 testimony. On the other hand, what he can't do is to  
14 authenticate the document, which is an evidentiary problem at  
15 this point. I would sustain the objection.

16 MS. PARKER: There is a certificate of authenticity,  
17 Judge.

18 THE COURT: If I understand accurately, there are  
19 only informational statements that are furnished to the US  
20 Government. The actual document goes to the foreign  
21 institution that has a reporting obligation.

22 MS. PARKER: No, it's a domestic entity.

23 THE COURT: Well, depending on which one you're  
24 referring to.

25 MS. PARKER: Well, the company -- the business that

1 maintained this record is Peregrine Financial Group, and  
2 they're the ones who provided the certificate of authenticity,  
3 so I think that does authenticate it.

4 THE COURT: But was it furnished to the Government or  
5 to the institution where the account was maintained?

6 MS. PARKER: It was the institution who maintained  
7 this record in their -- as part of their business records that  
8 provided it to the Government.

9 THE COURT: Then I would respectfully agree with the  
10 defense that we need to close the loophole on the authenticity.

11 MS. PARKER: All right.

12 BY MS. PARKER:

13 Q. In any case, let's go back to where we were, sir. You  
14 said that a W-8 would affect -- well, let me put it this way,  
15 let me back up.

16 A W-8 is that -- W-8BEN, is that something that the  
17 IRS actually receives?

18 A. No.

19 Q. Is it something that the IRS requires the account entity  
20 to maintain?

21 A. It is.

22 Q. Why?

23 A. Because if the US Government were to audit that individual  
24 or that corporation that received the W-8BEN, they would look  
25 at a list of individuals who are receiving US-sourced income,

1 and if it has a US person, they would expect a 1099 or some  
2 sort of income information document. So more or less, if a US  
3 person owned a bank account at some institution, they would  
4 have to be notified that they had dividend interest or whatever  
5 type of income from that particular institution.

6 Q. All right. So for a US person, the proper form would be  
7 what?

8 A. A W-9.

9 Q. And when a person fills out a W-9 and gives it to the  
10 institution, the financial institution, that institution, at  
11 the end of the year, generates information?

12 A. It does.

13 Q. And I think you said a 1099?

14 A. Correct.

15 Q. And that information goes both to the person or entity  
16 that holds the account and the IRS?

17 A. It goes to both, correct.

18 Q. All right. But if there's a W-8BEN, how does the  
19 financial institution handle the account information for that?

20 A. The information on the individual who filled out the  
21 W-8BEN would never be given -- they would never give  
22 information to the US Government about the individual who filed  
23 that form.

24 Q. And would -- would the IRS then know about that account  
25 holder's interest in their account in that financial

1 institution?

2 A. They would not.

3 Q. And, by the way, what is a 1099?

4 A. A 1099 is a document that lists certain types of income,  
5 so most of us have a bank account, and that bank account we get  
6 a 1099-INT, and that's an interest document, so that document  
7 is filed with the IRS and with whoever has an interest in that  
8 account so that the Government knows how much income you earned  
9 for the year, as well as you know how much income you earned  
10 for the year, so you can put it on a tax return.

11 Q. Let me ask you this question: If a person who is a US  
12 citizen uses a W-8BEN form in connection with a financial  
13 account, what is the impact of that on the IRS and its  
14 collection activities?

15 A. Well, if a US citizen filled out a W-8BEN and gave it to a  
16 US institution, the US Government would never know that they  
17 had an interest in it, never know that they had an interest in  
18 a financial account or whatever they're filing the W-8BEN for,  
19 so it would preclude the Government from knowing that asset  
20 really existed under that individual's name.

21 Q. And are there Social Security numbers on W-8BEN forms?

22 A. There are not.

23 Q. What about on W-9?

24 A. Yes, there is on W-9s.

25 Q. So if the IRS doesn't learn about someone's interest in an

1 account, financial account here because they've used the W-8  
2 instead of the W-9, does that affect the ability to assess a  
3 tax for the IRS?

4 A. It would -- it would certainly limit the ability for the  
5 IRS to assess a tax because the IRS would never be notified  
6 that there was income that had been earned.

7 Q. Would it impact the ability to collect on a tax?

8 A. It would. If there was -- if they filled out that  
9 information, from a collection standpoint, the IRS would know  
10 about that account and could take certain actions to try to  
11 collect on that particular account.

12 Q. I've handed you a couple more folders of proposed  
13 exhibits, Exhibit 65, 67, 68 and 70. Are those Saxo Bank  
14 account statements?

15 A. Yes, they all are.

16 Q. Are they for years, 2007, 2008, 2009 and 2010  
17 respectively?

18 A. Yes.

19 MS. PARKER: Your Honor, I offer Government's  
20 Proposed Exhibits 65, 67, 68 and 70.

21 MS. ARNETT: No objection.

22 THE COURT: Received.

23 BY MS. PARKER:

24 Q. All right. Can you take a look at Exhibit 65, please.

25 A. Yes.

1 Q. What time period is covered by this account?

2 A. It is in the top section there; it says January 1st, 2007  
3 until December 31, 2007.

4 Q. And what name is on the account?

5 A. It is James Dayton Pieron, Jr.

6 Q. And what is the address of Saxo Bank?

7 A. Saxo Bank is a -- it has a Denmark address.

8 Q. And that would be a foreign country?

9 A. It is a foreign country.

10 Q. It's a foreign bank account that would then need to be  
11 reported?

12 A. It is. It's a foreign bank account that should be  
13 reported on an FBAR.

14 Q. What about Exhibit 67? That's a bank statement for Saxo  
15 Bank for what time period?

16 A. For January 1st, 2008 to December 31st, 2008.

17 Q. And, again, the name on the account?

18 A. It is James Dayton Pieron, Jr.

19 Q. And Exhibit 69 -- excuse me, 68, I misspoke. I'm sorry.

20 What time period is covered for that?

21 A. January 1st, 2009 until December 31st, 2009.

22 Q. And whose name on that account?

23 A. It is James Dayton Pieron, Jr.

24 Q. And do exhibits 67 for 2008 and 68 for 2009 show money in  
25 those accounts?

1 A. They both do, yes.

2 Q. Exhibit 70, that's a Saxo Bank account statement for what  
3 time frame?

4 A. January 1st, 2010 until December 16th, 2010.

5 Q. And, again, the name on the account?

6 A. It is James Dayton Pieron, Jr.

7 Q. And, by the way, looking at this, does this provide the  
8 information in US dollars?

9 A. It does. It indicates it in the top left-hand corner. It  
10 says currency, USD.

11 Q. And was that true for the other statements?

12 A. It was.

13 Q. And does that -- that -- those account statements for 2010  
14 indicate that there was money in that account in Denmark?

15 A. It does.

16 Q. Belonging to James Pieron?

17 A. It does.

18 Q. Take a look at Exhibit 67 again and look in the time frame  
19 of April, 2009 when the 2008 tax return would have been  
20 filed --

21 A. Okay.

22 Q. -- around there.

23 A. Yeah, I see that on page 2 right about the middle.

24 Q. All right. Specifically, in April of 2009, was there  
25 money in the account at that time?

1 A. Yes. There's -- as of April, there's \$2,394,190 in that  
2 account.

3 Q. Same thing, you said April to June time frame?

4 A. Yeah, the money's there from April to beginning of May.  
5 The money is there between April and May, as well as more  
6 throughout the years.

7 Q. All right. But it's there for a period of time when  
8 the -- well, when the 1040 tax returns should have been filed  
9 and paid in April of 2015, correct?

10 A. Generally, some foreign individuals do have an automatic  
11 extension until two months, so it could be June.

12 Q. But there's money in the account?

13 A. Yes, between April and June there's more than \$2 million  
14 it looks like everyday.

15 Q. Well, look at the 2010 statements, again the 2009 returns  
16 would have been filed between April, May, June of 2010; is that  
17 correct?

18 A. That's correct.

19 Q. Look at the account for that time period, look at the  
20 statements. Is there money in the account statements during  
21 that time?

22 A. Between April and June of 2010, yes, there -- it looks  
23 like the minimum balance -- minimum balance would have been  
24 \$522,827 in that account it looks like from April.

25 Q. How much was that again, I'm sorry?

1 A. I'm sorry, it's \$517,847 appears to be the lowest balance  
2 between April and June.

3 Q. But there was money available in the account when the  
4 taxes would have been due?

5 A. Yes, more than a half a million.

6 Q. I show you Government's Proposed Exhibits 118, 119.

7 Exhibit 18 [sic] is account statements for what kind of  
8 account?

9 A. For a bank account at UBS.

10 Q. Which means what?

11 A. United Bank of Switzerland.

12 Q. And for what time period?

13 A. It is for -- it looks like November, 2008. I don't know  
14 how far they go, but -- November, 2008 to November 30th, 2009.

15 MS. PARKER: Your Honor, I offer Government's  
16 Proposed Exhibit 118?

17 MS. ARNETT: No objection.

18 THE COURT: Received.

19 BY MS. PARKER:

20 Q. In April of 2009 when Mr. Pieron's 2008 tax returns would  
21 have been due, was there money in that UBS account?

22 A. There was. In April of 2009 there was \$1,962, but as of  
23 May 26th, 2009 there was more than a million deposited in  
24 there.

25 Q. And that's the time frame, again, when the taxes should be

1 filed and paid?

2 A. Correct.

3 Q. For 2008?

4 A. Correct.

5 Q. Excuse me, Exhibit 119. Is that a Credit Suisse -- are  
6 those Credit Suisse bank account statements?

7 A. They are.

8 Q. I should have asked you this: Whose name was on the UBS  
9 account?

10 A. For Exhibit 118?

11 Q. Yeah, I'm sorry, yeah.

12 A. JDFX Holding-AG.

13 Q. And for Exhibit 119, the Credit Suisse accounts are for  
14 what entity?

15 A. JDFX Fund Management Limited.

16 Q. And what time period do they cover?

17 A. March 31st, 2007 -- or, I'm sorry, January 1st, 2007 to it  
18 looks like the last balance I have is September 30th, 2009.

19 MS. PARKER: Your Honor, I offer Government's  
20 Proposed Exhibit 119.

21 MS. ARNETT: No objection, Your Honor.

22 THE COURT: Received.

23 BY MS. PARKER:

24 Q. And looking at that account statement for the time period  
25 when the 2009 tax return should have been filed and taxes paid

1 for Mr. Pieron, what do you see in terms of account balances?

2 A. I'm sorry, can you repeat the question?

3 Q. All right. For the time frame when the 2008 1040 return  
4 and any taxes owed should have been sent to the IRS, which  
5 would have been in the spring of 2009, correct?

6 A. Correct.

7 Q. Was there money in that account?

8 A. Bates 10478, that shows the April balance, and that  
9 account had \$159,804 in it at the beginning of April.

10 Q. I think you also have still Exhibit 120D.

11 A. I do. I have 120D.

12 Q. And what, again, is the time period of that statement?

13 A. This is a statement April 1st, 2010 until April 9, 2010.

14 Q. And in April of 2010 was there money in that account?

15 A. There was.

16 Q. And how much?

17 A. There was -- at the beginning of April, April 1st, 2010,  
18 there was \$312,798.51.

19 Q. And, again, that's the time frame when tax returns should  
20 be filed, correct?

21 A. Correct, the tax return for the 2009 tax year.

22 Q. I'm going to show you or hand you Government's Proposed  
23 Exhibits 93 and 94. Do you recognize what those documents are?

24 A. I do.

25 Q. Are -- what are they?

1 A. They are documents that are sent out to collect on a  
2 liability that an individual would owe.

3 Q. By whom?

4 A. These ones identify James Pieron, Jr.

5 Q. And who sends those documents out?

6 A. The IRS does in their normal course of business.

7 Q. And what years are they for?

8 A. They are for tax year 2009, and the other is tax year  
9 2008.

10 MS. PARKER: Your Honor, I offer Government's  
11 Proposed Exhibits 93 and 94.

12 MS. ARNETT: No objection, Your Honor.

13 THE COURT: Received.

14 BY MS. PARKER:

15 Q. All right. Let's take a look, first of all, at  
16 Exhibit 94, please.

17 A. Uh-huh.

18 Q. What was the date on that?

19 A. The date of issuance is February 14th, 2011.

20 Q. And for what year?

21 A. For tax year 2008.

22 Q. And what amount is reported there as owed?

23 A. It's right in the middle, \$379,617.86.

24 Q. How about on Exhibit 93? Is that for 2009?

25 A. Yes, it is for 2009.

1 Q. Was it issued the same day?

2 A. Yes, February 14th, 2011.

3 Q. And what was the amount of that one?

4 A. It was for -- the total liability owed is \$166,584.07.

5 Q. Can you take a look at Exhibit 120F for us, F as in Frank.

6 A. Yes, I have it.

7 Q. And, again, what is 120F?

8 A. 120F is a bank statement for PNC Bank.

9 Q. And the name on the account?

10 A. IB Technologies, Inc., also lists James D. Pieron, Jr. as  
11 well.

12 Q. And is that for February of 2011?

13 A. Yes, February -- yes, February 1st to February 28th, 2011.

14 Q. What are the beginning and ending balances on that  
15 account?

16 A. It's at the bottom. The bottom shows beginning balance of  
17 \$435,182.13. It shows an ending balance of \$440,182.13.

18 Q. Next I'll show you Government's Exhibit 121A through C.  
19 Are those account statements?

20 A. They are.

21 Q. And for -- for what or whom?

22 A. For Komplique, Inc.

23 MS. PARKER: Your Honor, I offer Government's  
24 Proposed Exhibits 121A, B and C.

25 MS. ARNETT: No objection, Your Honor.

1                   THE COURT: Received.

2 BY MS. PARKER:

3 Q. Can you take a look at Exhibit 121C. Do you see that  
4 account?

5 A. One second. I'm looking for it. I've got a big stack of  
6 papers here.

7                   Yes, I see it now.

8 Q. All right. That's for what time period?

9 A. This is for January 1st, 2011 to January 31st, 2011, as  
10 well as other monthly statements, I believe. One second, let  
11 me check. Yes.

12 Q. Look, if you would, at the account statements for 2011,  
13 please.

14 A. Okay.

15 Q. What kind of money do you see in that account over the  
16 course of the month of February, 2011?

17 A. For February, 2011, it shows balances between \$604,559 and  
18 \$661,370.

19 Q. So between the last two accounts, the -- sorry, the IB  
20 Tech account and this Komplique account, in February of 2011,  
21 when those two tax notices come out, how much money  
22 approximately is between the two of them?

23 A. Between the two, if my math's right, more than a million  
24 dollars.

25                   MS. PARKER: Thank you, Your Honor. I'll pass the

1 witness.

2 THE COURT: Cross?

3 MS. ARNETT: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. ARNETT:

6 Q. Good afternoon, Mr. Miller.

7 A. Good afternoon.

8 Q. So as a revenue agent, you work for the civil side of the  
9 IRS, right?

10 A. I do.

11 Q. But we're here today on the criminal side, right?

12 A. Correct.

13 Q. And those are two different things, correct?

14 A. They are.

15 Q. And civil we talk about penalties and interest and  
16 penalties for not filing or penalties for underpayment,  
17 correct?

18 A. Correct.

19 Q. And on the criminal side, we talk about jail, right?

20 A. That's potentially on outcome, yes, in civil -- criminal  
21 investigations.

22 Q. Now, the criminal IRS agent that investigates is called a  
23 special agent, right?

24 A. Correct.

25 Q. And they can put what's called a freeze code on a

1 taxpayer's account?

2 A. They can.

3 Q. And that freeze code is an intentional code that they have  
4 to enter, right?

5 A. Yes. There's a deliberate thing to put that code in, yes.

6 Q. And it cuts off all communication, so there's no meetings  
7 with civil side, there's no information coming from the IRS,  
8 right?

9 A. That's -- in my understanding, yes, that's -- there's no  
10 more communication that comes from the civil side.

11 Q. But the taxpayer -- they don't reject information from the  
12 taxpayer? They'll continue to take the taxpayer's information?

13 A. Correct.

14 Q. And are you familiar with the Taxpayer's Bill of Rights?

15 A. I have seen the Bill of Rights, yes.

16 Q. If I could -- not publish it, because it's not admitted,  
17 but I'm going to show you what we have marked as Defense  
18 Exhibit 1031. Does that come up on your screen?

19 A. No.

20 Q. Let me check.

21 THE COURT: Are you using front source or rear source  
22 from the defense table?

23 MS. ARNETT: I think I'm up front. I'll just get a  
24 paper copy.

25 THE WITNESS: Okay.

1 MS. ARNETT: May I approach, Your Honor?

2 THE COURT: You may, and I would suggest that we can  
3 coordinate this so that we can switch over a little bit more  
4 rapidly this afternoon.

5 MS. ARNETT: Yes, sir.

6 BY MS. ARNETT:

7 Q. Do you have the Taxpayer's Bill of Rights?

8 A. I do.

9 Q. And this is the document that you're familiar with, right?

10 A. Yes, ma'am.

11 Q. And could you read the first entry there, the right to be  
12 informed.

13 MS. PARKER: Objection.

14 THE COURT: I actually don't know the legal status of  
15 the Taxpayer's Bill of Rights. I don't know whether it's an  
16 aspirational document from the Service, whether it is  
17 incorporated into a statute passed by Congress or how it  
18 otherwise relates to the IRS code.

19 MS. ARNETT: It's a publication issued by -- or  
20 Mr. Miller, the expert, might know, but it's a publication  
21 issued by the IRS. It's on IRS.gov.

22 THE COURT: Perhaps you can explore that with the  
23 witness to see if you can establish that.

24 MS. ARNETT: Okay.

25 BY MS. ARNETT:

1 Q. Are you familiar with the Taxpayer Bill of Rights?

2 A. I am.

3 Q. And it's published by the Internal Revenue Service,  
4 correct?

5 A. It is a document published by the IRS.

6 Q. And it has its own particular publication number, right?

7 A. It does.

8 Q. And catalog number?

9 A. Correct.

10 Q. And it's what the IRS says that the taxpayers are supposed  
11 to receive, correct?

12 A. Correct?

13 MS. ARNETT: I offer Exhibit 1031.

14 THE COURT: Any objection?

15 MS. PARKER: Yes.

16 THE COURT: And that is?

17 MS. PARKER: I don't see the relevance.

18 THE COURT: We'll provide some latitude at this stage  
19 given its reference in the context of the opening statements.  
20 I believe it could be connected up and relevant. Overruled.

21 MS. ARNETT: Thank you.

22 BY MS. ARNETT:

23 Q. When the freeze code gets attached to a taxpayer's  
24 account, how are -- how does the IRS continue to provide the  
25 Bill of Rights that they say they're supposed to offer the

1 taxpayers?

2 A. If there's a freeze code on the -- his module, which is  
3 what we call it, his account, there would be no communication  
4 from the civil side.

5 Q. Even though it's required in the Bill of Rights?

6 MS. PARKER: Well, Your Honor, I think that's a  
7 misuse of the word "required," and I object to that. This is,  
8 at best, a policy statement. It's not a law. It's not a legal  
9 requirement.

10 MR. MINNS: It is a law. It was mandated by  
11 Congress, Your Honor.

12 MS. PARKER: There have been no foundation for that  
13 assertion.

14 MR. MINNS: Huge congressional hearings on it.

15 MS. PARKER: Judge, I don't want to have --

16 MR. MINNS: I apologize.

17 THE COURT: We're close enough to 1:00 that we can  
18 take up the discussion that shouldn't necessarily involve the  
19 jury at this stage.

20 MS. PARKER: Exactly. Thank you.

21 THE COURT: It's a good place.

22 MS. ARNETT: I was going to move on after that  
23 question, but we can break, if that's what you're suggesting.

24 THE COURT: Let's do that.

25 MS. ARNETT: Thank you.

1                   THE COURT: We appreciate your time and attention  
2 today. You're obviously free to go about your business this  
3 afternoon, and we'll look forward to seeing you in the morning.  
4 Coffee pot will be on by eight, right, Mr. Haines.

5                   THE CLERK: Correct.

6                   THE COURT: Please rise for the jury.

7                   (At 12:56 p.m., jury leaves.)

8                   THE COURT: We're outside of the presence of the  
9 jury. Please be seated.

10                  MS. PARKER: Judge, do you want the witness here or  
11 not for this?

12                  THE COURT: I don't have any objection to the witness  
13 being present with respect to this discussion, unless the  
14 defense does.

15                  MR. MINNS: No. Is it -- I don't want to -- it's  
16 Ashley's witness, but since there's no jury here I thought I  
17 might be permitted to join in the discussion with the Court on  
18 this, if there's --

19                  THE COURT: Oh, it would be a pleasure.

20                  MR. MINNS: Thank you, Your Honor.

21                  THE COURT: And, sir, you're done from the witness  
22 stand, at least at this juncture.

23                  Simple question at this stage is do we know what the  
24 force or authority of the Taxpayer's Bill of Rights is? I'm  
25 certainly quite familiar with the reference to it. My

1 understanding is that it never made -- it does not carry the  
2 force of law, that it an aspirational expression by the Service  
3 of what they believe taxpayers should be entitled to. Do we  
4 know?

5 MR. MINNS: And we're -- we're going to get a  
6 definitive answer in the morning, Your Honor, because we don't  
7 want to say something and be proven wrong, but this is my  
8 recollection of the extensive hearings that took place in  
9 Congress.

10 There was a lot of improper things that happened,  
11 seizures that shouldn't have happened, things like that, and it  
12 was created right after that, so there was a Taxpayer Bill of  
13 Rights presented before Congress. I thought it had passed, but  
14 we will know for certain tomorrow morning, and I have -- we  
15 have a special agent who was in charge of Illinois, and he  
16 doesn't know off the top of his head. I thought he would.

17 But it's definitely a publicly registered statement  
18 by the Internal Revenue Service, and they're definitely  
19 supposed to follow it. It's my understanding --

20 MS. PARKER: Judge -- I'm sorry.

21 MR. MINNS: It's my understanding -- and I remember  
22 talking with Paul DesFosses when he was testifying before  
23 Congress on this for the Taxpayer Bill of Rights. It was my  
24 understanding that it was passed, but I don't want to -- I  
25 would prefer when we -- if we could get here at 7:55 tomorrow

1 and we can say yes or no that it is law itself, I would prefer  
2 that, but I believe it, but that doesn't mean I'm right.

3 THE COURT: Wouldn't that be wonderful? I will be  
4 here at 7:55, and we'll look forward to learning what you have  
5 learned. Okay. We may do a little digging on that on our own.

6 I've got a couple other things because we've got a  
7 little bit of time here, and it may be appropriate to excuse  
8 the witness. I'd like to talk about the motion in limine for a  
9 little bit, so that I can get some background on that.

10 MS. PARKER: I'm just going to grab the exhibits  
11 so --

12 THE COURT: Yes, thank you.

13 And one thing that I've been doing during the course  
14 of the testimony, as well, is taking a look a little bit more  
15 carefully at the motion in limine and the associated exhibits  
16 that were attached to it. One of the assertions that's made in  
17 the motion in limine arises out of the portion of the brief on  
18 page 5 where it reads as follows:

19 Pieron -- and I apologize for my mispronunciation of  
20 your name if it is a mispronunciation. How do you pronounce  
21 your name correctly?

22 THE DEFENDANT: Pieron, like the old --

23 THE COURT: Pieron.

24 THE DEFENDANT: Pierre, the character in Peter and  
25 the Wolf an old Russian nursery rhyme, I think it was, but it

1 was Pierre, so it's Pieron.

2 THE COURT: That's helpful. Thank you.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Pieron did not invest his funds with Cook  
5 but he still had sought to portray himself as a victim and even  
6 claimed a substantial theft loss deduction on his amended  
7 personal income tax returns for 2008 and 2009.

8 It goes on, nevertheless, if this portion of the  
9 current motion is granted, the Government will not seek to  
10 present evidence in its case in chief that Pieron falsely  
11 claimed a theft loss deduction because he was not a victim of  
12 theft under Section 165(c), which allows certain casualty  
13 losses or losses from theft. Rather the Government will accept  
14 the amended tax returns reflecting the theft loss for purposes  
15 of trial.

16 On my review of the documentation at this stage, I  
17 don't understand what that means. It's -- if I understand the  
18 offer that was made by the defendant, the effect, if the  
19 calculations on the loss were accurate, would eliminate the tax  
20 liability. That obviously is not the Government's assessment.

21 MR. DEPORRE: Correct, Your Honor.

22 THE COURT: Why is that? Because as I understand  
23 acc -- at least the accusation that -- was when Mr. Cook made  
24 his investment in the stock, there was -- he was not issued  
25 treasury stock from the holding company. The defendant

1 actually sold stock that he held directly to Mr. Cook, which  
2 would be potentially a taxable transaction as opposed to the  
3 issuance of treasury stock. That creates a potential capital  
4 gain, and then the remaining question, either under the Claim  
5 of Right Doctrine or 1331 would be whether there's an  
6 offsetting loss that would be appropriately deducted against  
7 that gain.

8                   Why -- how is it that you can contend that even if  
9 that loss did not occur, there are was still actionable tax  
10 evasion?

11                   MR. DEPORRE: Based on the first amended returns that  
12 the defendant filed --

13                   THE COURT: Okay.

14                   MR. DEPORRE: -- he took a theft loss for both  
15 '08 and '09 in those years and still had additional income that  
16 was reflected and that resulted in substantial tax.

17                   THE COURT: Now, one thing that's notable, at least  
18 from the offer of proof, is that there are tax calculations  
19 that were presumably done by the accountant, but there's no  
20 source documentation that would support any of those adjusting  
21 entries that were necessarily included with any of the  
22 material. Is that true?

23                   MR. DEPORRE: That is true.

24                   THE COURT: Is that true?

25                   MR. MINNS: This is -- this is my understanding, Your

1 Honor, from -- my -- and the entire area doesn't make a great  
2 deal of sense to me, but there's been recent Circuit Court  
3 opinions apparently supporting Mr. Pavlik's position, so he was  
4 prescient rather than -- there wasn't a lot at the time he took  
5 this stand. But what Mr. Pavlik's position was that the  
6 reputation caused damages, and reputation damages because of  
7 Cook got them fired from the bank. And Mr. Pavlik should be  
8 the source of this, because if I'm misinterpreting it, I  
9 apologize to the Court.

10           When the relation -- and there's some similarity to  
11 this between the stuff with Bernie Madoff. When the  
12 relationship with him was publicized, the bank -- with  
13 Mr. Cook, the bank cut off --

14           THE COURT: Credit.

15           MR. MINNS: -- their ability to trade and closed them  
16 down immediately, and the business, which had a substantial  
17 value, had zero value the next day.

18           And it is my understanding that Mr. Pavlik prepared  
19 the returns based on that and that there are loss of reputation  
20 as a result of the damages. You may not have source documents  
21 showing them exactly, because it's not -- it's not -- it's not  
22 a mathematical computation as I understand it.

23           So the ability of the -- to claw back the money was  
24 in existence. The money was gone --

25           THE COURT: Because they were insolvent?

1 MR. MINNS: Pardon?

2 THE COURT: Because they were insolvent?

3 MR. MINNS: Yes, sir. And then there's two thought  
4 processes; one, if you don't -- if you receive -- when they owe  
5 it back, it's like receiving a loan. If you don't pay the loan  
6 back, it's income, but that was -- that's the first position.  
7 But the second position is that it is excused because of the  
8 statute I believe that Mr. Pavlik found. It is excused just as  
9 Congress passed some laws when you lost your home, you didn't  
10 have to pay taxes on that for a period of time on the unpaid --  
11 unrepaid mortgage note, so these things happen, so --

12 THE COURT: If the calculations that Mrs. Pavlik  
13 tenders as a part of the offer are not based on economic losses  
14 and, therefore, there is no source documentation for expenses  
15 for example that Mr. Pavlik turned up that the former preparer  
16 did not, how does he get reputational loss figures in order to  
17 include those in the offer?

18 MR. MINNS: I don't know, Your Honor. We have two  
19 experts on this who can testify to that. One of them was an  
20 appeals officer for 43 years, Professor Gavin, I believe, and I  
21 don't know. It's -- it's -- I think I'm above average on  
22 taxes, but this is over my head.

23 And my understanding -- my understanding right now is  
24 that it would probably pass audit, so he would probably pass  
25 audit based on that. I -- I would not be able to prepare these

1 tax returns. I wouldn't even be able to read them, and I have  
2 more than a layman's understanding of tax law.

3 Mr. Pavlik -- and our burden is not to prove that  
4 it's -- that the tax return will pass audit or should pass  
5 audit or anything else. Our burden is to prove the intent of  
6 James Pieron. He relied on a very qualified expert, who more  
7 likely than not was right, but until the audit takes place, no  
8 one will know if he was right or wrong.

9 THE COURT: What I'm trying to get my finger on at  
10 this point is the extent to which there is a difference of  
11 opinion between Mr. Pavlik and the Service as a matter of  
12 principle concerning the application of the doctrine or 1331,  
13 or there's a difference of opinion of fact concerning the  
14 actual losses associated with the collapse of the enterprise.

15 MR. MINNS: From what we have been hearing, there is  
16 a difference of opinion in fact. The Government does not think  
17 that Mr. Cook was responsible for the downfall, but they have  
18 to speak for themselves. I don't have an opinion whether he  
19 was responsible for the downfall or not, so if Mr. Cook was not  
20 responsible for the downfall, then we might not be entitled  
21 to --

22 THE COURT: Well, and when we say "the downfall,"  
23 we're talking about -- it's an enterprise, there are four of  
24 them, with four letters, JDFX. What information do you have  
25 concerning the actual fact of the insolvency of that entity

1 which became a predicate for you saying that there was a  
2 reputational loss?

3 MR. MINNS: Could Ms. Arnett speak to that, Your  
4 Honor.

5 MS. ARNETT: Sure. We have the statements from the  
6 trading account where you can see when the information about  
7 Trevor Cook's indictment and all that investigation comes out  
8 where they start cutting it off, and they completely cut off  
9 the trading capabilities of JDFX, and it lines up with the time  
10 frame for when the Cook stuff came out and when the banks  
11 pulled their accounts.

12 THE COURT: And most of this was currency trading,  
13 wasn't it?

14 MS. ARNETT: Yes, Your Honor.

15 THE COURT: And so there's a point in time at which  
16 the documentation in your view would support the notion that  
17 the trading clients simply stopped looking to JDFX and, as a  
18 result, the entity collapsed from insolvency?

19 MS. ARNETT: Well, and the banks. The banks pulled  
20 the credit line, so they have to have the credit line to do the  
21 trading and when all the stuff came out, the bank cut off the  
22 credit line.

23 THE COURT: So it was --

24 MS. ARNETT: They couldn't trade, and then they froze  
25 the account for a certain period of time so then the customers

1 pulled their -- pulled their accounts --

2 THE COURT: So it was the loss --

3 MS. ARNETT: -- and everybody.

4 THE COURT: It was the loss of a line of credit which  
5 was necessary to continue the trading, as opposed to clients no  
6 longer being willing to trade?

7 MS. ARNETT: It's a combination. It's a combination  
8 of both.

9 THE COURT: Any of that -- any of the information  
10 that would support your suggestion that the insolvency occurred  
11 as a result of these losses of credit shared with the  
12 Government during the course of the exchange of reciprocal  
13 discovery?

14 MS. ARNETT: Yes, Your Honor. In fact, I think it  
15 came from their records.

16 THE COURT: True?

17 MR. DEPORRE: We received records from the accountant  
18 firm, Andrews Hooper Pavlik, that didn't substantiate but  
19 had -- they were in the form of work papers rather than source  
20 documentation.

21 MS. ARNETT: Oh, I'm referring to the Deutsche Bank  
22 records that you all provided us.

23 MR. DEPORRE: And those would be for the trading, the  
24 traders?

25 MS. ARNETT: It's the -- you can watch the trades and

1 there's a significant -- you can clearly see it in the trades  
2 where it cut off, and it corresponds in time with the Cook --

3 THE DEFENDANT: Not just that -- they interviewed --  
4 sorry.

5 THE COURT: Did Deutsche Bank or a representative of  
6 Deutsche Bank ever give a explanation for their withdrawal of  
7 the line?

8 MS. ARNETT: We have the -- yes. We have the  
9 termination letter from Deutsche Bank. It's actually on our  
10 exhibit list.

11 MR. DEPORRE: But, Your Honor, that termination  
12 letter is from 2010, so it's outside the years that we're  
13 talking about.

14 MS. ARNETT: 2010 is when you owe your 2009 taxes.

15 MR. DEPORRE: But if he's saying the theft loss arose  
16 in 2008 or 2009, that doesn't make sense. The theft loss has  
17 to be taken in the year that the theft is discovered, and if  
18 they're saying that the theft, which isn't a theft, but a  
19 reputational harm by Deutsche Bank pulling --

20 MS. ARNETT: A line credit.

21 MR. DEPORRE: A line of credit.

22 MS. ARNETT: It's difference also than the day they  
23 terminate.

24 MR. DEPORRE: That would be in 2010.

25 MS. ARNETT: Well, the termination letter is not the

1 same time that they pull the line of credit. They pull the  
2 line of credit and then terminate later, but --

3 THE COURT: And when you say pulled, they were  
4 essentially no longer letting them draw?

5 MS. ARNETT: Right.

6 THE COURT: Is there anything that reflected what  
7 their obligations were when they were no longer able to draw on  
8 the line? Has there been any development of any of those  
9 financial records?

10 MS. ARNETT: Outside of Deutsche Bank records, not  
11 that I'm aware of.

12 THE COURT: Back to the proposition that you had  
13 advanced in the motion in limine, I'm trying to understand, at  
14 least at this juncture, why the assertion that you're making  
15 concerning the loss and its impact on the reporting for 2009,  
16 2010 where you make the suggestion nevertheless, if this  
17 portion of the motion is granted, the Government will not seek  
18 to present evidence in its case in chief that the information  
19 falsely claimed the theft loss deduction.

20 If that's true, that means there's still actionable  
21 misconduct, true? I mean, putting aside the loss.

22 MR. DEPORRE: Putting aside the loss, yes, there's  
23 still actionable misconduct.

24 THE COURT: And what is that?

25 MR. DEPORRE: The evasion of payment. So the loss on

1 the -- I think there are two distinct theories. The first is  
2 the theft loss deduction, which is reflected in the first  
3 amended returns for '08 and '09.

4 THE COURT: Yep.

5 MR. DEPORRE: The second is a claim of right position  
6 which is reflected in an offer and compromise -- or, excuse me,  
7 an offer and compromise as to doubt as to liability, and also  
8 in an amended 2011 return that is filed and the -- around the  
9 same time as the offer and compromise.

10 The theft loss -- if we take the defendant at his  
11 word for the theft loss, there's still a balance due for those  
12 tax returns for both '07 -- or, excuse me, '08 and '09, and so  
13 there's still actionable misconduct following that.

14 THE COURT: And that is?

15 MR. DEPORRE: That is that there's a tax due and  
16 owing, and that the tax isn't paid, and that the defendant does  
17 things to put assets outside the reach of the IRS, and that the  
18 defendant files false information in the form of a false  
19 collection information statement with the IRS.

20 THE COURT: Which we've, in part, reviewed today --

21 MR. DEPORRE: Correct.

22 THE COURT: -- through the witness?

23 What do you think of that?

24 MS. ARNETT: Well, if they want to accept the returns  
25 that the defendant filed, then that's great. The 2014 return,

1 amended return, the 2011 amended return that was filed in 2014  
2 wipes out the tax for 2008 and 2009. This is an evasion of  
3 payment case, and there's no tax due and owing if you want to  
4 accept the returns that the defendant filed.

5 THE COURT: Well, that begs the question, which is  
6 tax due and owing when? Is it tax -- is -- is it tax evasion  
7 if at the time you file a return you simply don't include a  
8 check?

9 MS. ARNETT: No.

10 THE COURT: Do you agree?

11 MR. DEPORRE: No, I believe that can be tax evasion.

12 THE COURT: Well, isn't that, actually putting aside  
13 some of the more interesting arguments, one very basic  
14 question, which is when. And I don't know the answer.

15 MR. DEPORRE: Well, I also don't -- I don't think we  
16 need to go there. I think that the fact that the defendant  
17 never files another amended return for 2008 or 2009, besides  
18 that first amended return, he submits an offer and compromise  
19 saying here's my theory why this liability should be less, but  
20 he never files a 1040X for '08 and '09 based on the claim of  
21 right theory. It simply isn't --

22 THE COURT: But how can he do that, given the nature  
23 of the timing of events? As I recall, you've got three years  
24 to file an amended return from the time that it is due. And in  
25 this case it would encompass, presumably, the initial tax that

1 he probably -- I don't know that he did or did not do this,  
2 would have reflected on his return from the sale of the stock  
3 that he owned.

4 Inherent in these transactions is that the insolvency  
5 occurs after the creation of the tax liability, so he can --  
6 does the adjustment go on the later return or -- or do you have  
7 to go back and amend for the earlier return? It's again a  
8 question that I'm not familiar with.

9 MR. DEPORRE: Could I ask somebody? Phone a friend?

10 THE COURT: Call a friend.

11 MS. ARNETT: I think that this goes to knowledge,  
12 too, right; the intent of the defendant, I mean, you have to  
13 have intent.

14 THE COURT: Sure.

15 MS. ARNETT: Yes.

16 THE COURT: And this would not be the first defendant  
17 that we have seen who missed the implications of selling the  
18 stock which he owned as opposed to the issuance of some  
19 treasury stock with a zero basis. Presumably the initial basis  
20 that he would have had in the stock that he owned was  
21 substantially less than that of the proceeds that he received  
22 from Mr. Cook and would have generated potentially a fairly  
23 significant liability.

24 So then the question becomes, if that's true, how one  
25 handles fact that that liability exists at time period A, but

1 at time period C you have an independent set of events that  
2 make the stock largely worthless, even though it started out to  
3 zero, went to 15 million when Mr. Cook bought it, and if your  
4 assertion is accurate, went to zero as a result, from your  
5 perspective, of a misunderstanding by Deutsche Bank's  
6 understanding of Mr. Cook and your client's relationship  
7 driving the entity into insolvency, and I don't know the answer  
8 as to how you handle the reporting on that.

9 MR. MINNS: The interesting thing, Your Honor, is  
10 this, the gentleman sitting -- the tax -- at the Government  
11 table is an expert in tax on his own. He's knowledgeable.  
12 They have prepared this case, and as they sit here right now,  
13 they don't -- he's going to have to ask another expert to  
14 figure this out, so the question is whether our client could  
15 have even known this.

16 And in -- the first time he could have known even the  
17 possibility of this giant amount of money was in -- when it was  
18 calculated and the first time it was calculated was in 2011, so  
19 he had no way of even knowing about it until it was calculated.  
20 In 2011 he did not --

21 THE COURT: Well, let me -- so that I understand  
22 correctly --

23 MR. MINNS: Yes.

24 THE COURT: -- when he accepts the 15 million more or  
25 less from Mr. Cook --

1 MR. MINNS: Yes, Your Honor.

2 THE COURT: -- in exchange for the stock --

3 MR. MINNS: Yes.

4 THE COURT: -- does he ever report that capital  
5 transaction?

6 MR. MINNS: He doesn't file a US tax return at that  
7 time, and Switzerland doesn't charge you taxes on capital gains  
8 so --

9 THE COURT: I appreciate -- I appreciate that's true  
10 under Swiss law --

11 MR. MINNS: Yes.

12 THE COURT: -- but I guess my point is that that is  
13 not true under US law for a US citizen abroad. Does he ever  
14 reflect the potential liability for that capital transaction  
15 and, if so, when?

16 MR. MINNS: He reflected -- it's reflected in the  
17 notes of Carol Nathan, that he told her he had a \$9 million  
18 capital gain, and later he told Mr. Pavlik I think you've left  
19 some money off. I think there was more money than this, and  
20 Mr. Pavlik increased the amount of debt on the next tax return,  
21 because the taxpayer, who is the only one that could have known  
22 that, actually asked him -- he said I don't -- this is not the  
23 full amount. So, yes, the correct amounts of income were  
24 reported to the tax -- to the tax preparers, and they're the  
25 experts that prepared the tax returns.

1                   THE COURT: Well, on your view of the circumstance  
2 the loss -- you call it reputational loss -- really isn't a  
3 dispute about the applicability of the tax loss. It's simply  
4 as a result of the fact that it was insolvent, true?

5                   MR. MINNS: I believe so, Your Honor, and I'm not  
6 competent to testify about that tax return, but that is my  
7 understanding. The witnesses who are competent will -- have  
8 both been traded -- they're on the Government's list, and I  
9 assume the Government will call them; if they don't, we'll call  
10 them.

11                  THE COURT: Is there documentation other than the  
12 Deutsche Bank documentation of their withdrawal on the line and  
13 their termination of the line that would substantiate the  
14 connection between JDFX's insolvency and the events related to  
15 Mr. Cook?

16                  MS. ARNETT: Mr. Pavlik required Mr. Pieron to give  
17 him a write-up of the situation and how it affected him, and  
18 that is included in AHP's documents which we received from the  
19 Government.

20                  THE COURT: Okay. Helpful to me to try and catch up  
21 with you and my understanding of the situation.

22                  At least for our brief meeting at 7:55 tomorrow,  
23 we'll have an opportunity to take a look at the legal force of  
24 the Taxpayer's Bill of Rights and pick up with testimony on  
25 cross-examination.

1                   Anything else we ought to cover before we close for  
2 the day?

3                   MS. ARNETT: No, Your Honor.

4                   MS. PARKER: Nothing for the Government, Your Honor.

5 Thank you.

6                   THE COURT: The record's closed. Thank you.

7                   (At 1:26 p.m., court recessed.)

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C E R T I F I C A T E

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I certify that the foregoing is a correct transcript  
from the proceedings in the above-entitled matter.

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Date: 3-22-2019

*Carol M. Harrison*

16

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